



Presented on : 18-08-2022
Registered on : 18-08-2022
Decided on : 12-06-2026
Duration : 3 years, 9 months, 25 days

**IN THE COURT OF THE III ADDL.SENIOR CIVIL
JUDGE & J.M.F.C, RANEBENNUR**

**PRESIDED OVER BY SRI. MAHANTESH BHUSAGOL, B.A, (Law) LL.B.
III Addl. Sr. Civil Judge & J.M.F.C, RANEBENNUR.**

O.S No.145/2022

Dated: This the 12th day of June - 2026

Plaintiffs:-

1. Smt. Sonavva W/o Late Ramappa Lamani,
Age: 80 Years,
Since dead, legal representatives are already
on record.
2. Sri. Motaleppa S/o Late Ramappa Lamani,
Age: 62 Years,
3. Sri. Ningappa S/o Late Ramappa Lamani,
Age: 55 Years,
R/o: Hullatti Thanda,
Post- Ranebennur, Tq : Ranebennur,
Dist: Haveri, PIN code -581115.
4. Sri. Mahadevappa S/o Late Ramappa
Lamani,
Age: 46 Years,
5. Smt. Demavva W/o Sri Veerappa Mayak,
Age : 57 years,

The plaintiff No.1, 2, 4 and 5 are residing at
Channapur Thanda, Post- Gudagur, Tq:
Ranebennur,
Dist: Haveri- PIN Dode-581115.



(By Sri. H.M.S, Advocate)

// Versus //

Defendant/s :

1. Sri. Komalappa S/o Late Venkappa Lamani,
Age: 58 Years,
2. Sri Sakreppa S/o Late Venkappa and
Adopted son of Gangappa Lamani,
Age : 75 years,
3. Sri Jemleppa S/o Late Venkappa Lamani,
Age: 56 years,
4. Sri. Revappa S/o Late Venkappa Lamani,
Age: 54 years,
5. Sri. Lachamappa S/o Late Venkappa Lamani,
Age: 52 years,
6. Smt. Dyamavva W/o Dyamappa Lamani,
Age: 57 years,

All are residing at Channapur Thanda
Post-Gudagur, Tq: Ranebennur,
Dist: Haveri, PIN Code-581115.

7. Smt. Bheemavva,
(Since dead rptd by her legal heirs)
- 7(a) Sri Malatesh M Nayak,
S/o Sri Manjappa Nayak,
Age: 28 years,
R/o : Channapur Thanda,
Post: Gudagur, Tq: Ranebennur,
Dist: Haveri, PIN code-581115.
- 7(b) Smt. Shilpa V, W/o Sri Venugopal,
D/o Sri Manjappa,
Age: 26 years,



R/o Channapur Thanda,
Post- Gudagur, Tq: Ranebennur,
Dist: Haveri, PIN code-581115.

**(Def.1 to 6 By Sri.N.V.C, Adv.,
Def.7 (a) & (b) are ex-parte)**

Date of Institution of suit	18.08.2022
Nature of the suit	Declaration and Possession
Date of Commencement of evidence	27-09-2023
Date of pronouncement of judgment	12.06.2026
Total Duration	Year/s Month/s Day/s 3 9 25

(MAHANTESH G. BHUSAGOL)
III Addl. Sr. Civil Judge
& J.M.F.C, Ranebennur.

J U D G M E N T

The plaintiffs institute this suit for the relief of declaration, declaring them, as absolute owner in respect of the suit schedule property. Consequently, to pass a decree for possession of the suit schedule property, by ejecting the defendant No.1 from it, by directing him to quit, vacate and hand over the vacant possession of the said property, to the plaintiffs.

Consequently, to grant permanent injunction against the defendant No.1 by restraining him, his agents,



power of attorney holders or any one, acting on his behalf from alienating, leasing, creating any type of charge, lean etc., or acting against to the interest of these plaintiffs, upon the suit schedule property.

Further, sought for the decree of directing the defendant No.1 to 6 to pay damages to the plaintiffs towards having illegal possession/occupied of the suit schedule property, as court deems fit.

2. The brief facts of the plaintiffs case are as follows;

It is the case of the plaintiffs that, the husband of the plaintiff No.1 and father of plaintiffs No.2 to 5 and defendant No.7 by name Ramappa Lamani had been cultivating the suit land, as a tenant, since 1961-62. Accordingly, the Land Tribunal Ranebennur after made enquiry, granted the occupancy right on dated 12.11.1976 and issued form No.10 by collecting necessary charges from him. During his life time, had been in possession and enjoying the suit schedule property. He died on 25.12.1998 leaving behind plaintiffs and defendant No.7, as his legal heirs. During his life time, he was addicted to alcoholic and other bad habits. Further, he was illiterate and the plaintiffs are also illiterate.

3. Recently, the plaintiffs came to know from the villagers, about the suit schedule property granted in favour of their father. Accordingly, they were sought revenue records and came to know that, the defendants No.1 to 6 are illegally and fraudulently, got entered the name of defendant No.1 by



effecting M.E No.329, M.E No. 485 and M.E No. 1016 and also in the revenue records. Though, the defendant No.1 has no any rights or title or interest, over the suit schedule property, but, illegally possessed the said property. The plaintiffs demanded the defendant No.1 and his family members to vacate and hand over the schedule property. But, at that time, postponed the same. Finally, on 15.11.2021 again demanded to vacate and hand over the suit schedule property, then, they have given vague answer. Even the plaintiffs have requested the defendant No.1 and his family members to effect partition in the joint family properties. But, same was also refused by denying the rights of the plaintiffs over the joint family property.

4. Thereafter, the plaintiffs issued statutory legal notice to defendant No.1, through their advocate on 25.11.2021 but, contrary, received vague and untenable reply from defendant No.1's advocate on 06.12.2021. The plaintiffs No.2 to 4 have filed an applications before the Tahsildar Ranebennur and the Deputy Commissioner Haveri, for transfer of entire Revenue documents by deleting the name of the defendant No.1. The plaintiffs are absolute owner of the suit schedule property and the defendants are illegally possessed, the suit schedule property by causing damages to the plaintiffs, hence, defendants are liable to pay damages of Rs.90,000/- per year, with interest. Hence, the plaintiffs constrained to file the present suit.

5. In response of service of suit summons from the court, the defendant No.1 to 6 have appeared before the court



through their respective counsels and defendant No.1 and 2 have filed their written statement and same is adopted by defendant No.3 to 6 by filing adoption memo. In spite of service of suit summons to defendant No.7(a) and 7(b), but, they absent before the court, hence, placed them as ex-parte.

6. The defendant No.1 to 6 in their written statement except admitting the relationship between the parties, the other facts put forth by the plaintiffs in the plaint are denied. Further, the defendants in their written statement have contended that, the plaintiffs are strangers to the suit schedule property. They were never in physical possession and enjoyment of the suit schedule property. As per the genealogy one Tejappa Lamani is propositus, he had two wives namely, Dhamakavva and Jenakavva. From the womb of first wife Dhamakavva born Venkappa and he got married with Ramanavva and she begotten six children i.e., defendant No.1 to 6.

7. The second wife Jenakavva gave birth to Sheshappa and Ramappa. Sheshappa got married with Roopavva and gave birth to six children, namely Somaleppa, Demappa, Puttappa, Venkappa, Lokappa, and Irappa. The elder son of Somaleppa died leaving behind his wife Rampava and four children by name Shekappa, Laxaman, Rajappa and Ramesh. Another son of Somaleppa by name Demappa died leaving behind his wife Girijamma and his three children namely, Guddappa, Fakkirappa and Chandrappa. The second son Jenakavva by name Ramappa died leaving behind his wife plaintiff No.1 and six children, viz., plaintiffs No.2 to 5 and



one Bheemavva. The said Bheemavva died leaving behind defendant No. 7(a) and 7(b).

8. Further, in the written statement averred that, the father of the plaintiffs by late. Ramappa Lamani was karta/manager of the joint family members. He being manager of the family, on behalf of the joint family filed form No.7, before the Land Tribunal Ranebennur. The Land Tribunal, as per order No. LRF (A) SR144740/76, on behalf of the joint family granted occupancy right, in his favour. Accordingly, the premium amount Rs.570/- and 5 ½ % of interest on 20 installments paid, on behalf of the joint family. The mutation dairy No.318 was certified and the property stands in the name of late Ramappa Lamani. But, the suit schedule property is not self acquired property of late Ramappa Tejappa Lamani. Thereafter, in the family settlement between the brothers, the Sy No.3 measurig 5 acre 00 gunta property fallen to the share of defendant No.1 and 2. The plaintiffs and their father has given varadi to the revenue department, accordingly, the mutation dairy No.329 was sanctioned. The same was not questioned before any authority. Further, the plaintiffs never in joint possession and jointly cultivating, as they are not the joint family members of the defendants. Therefore, it estoped the plaintiffs, by the principal of law of estoppel and the mutation dairy No.329 was granted on 05.04.1984, but, the same was challenged, after 38 years by filing the present suit. Hence, the suit of the plaintiffs is hopelessly time barred.



9. Further, in the written statement averred that, in the family settlement by way of partition Sy No.80 measuring 5 acre property fallen to the share of Ramappa Lamani. The said property sold by him, in favour of his brother Sheshappa Lamani. Therefore, now the said property stands in the name of children of Sheshappa. Hence, they are also necessary parties to the present suit. Accordingly, the suit is bad for non joinder of necessary parties and bad for non inclusion of Sy No.80 of Gangapur Village.

10. Further averred that, as per mutation dairy No.495, the suit schedule property got mutated in the name of defendant No.2. Thereupon, the defendant No.2 for the purpose of minor irrigation, on. 02.08.1988 obtain loan of Rs.13,000/-, again on. 05.09.1993 obtained loan of Rs.40,000/- and finally, on. 06.11.1993 obtained loan of Rs.20,000/-, by mortgaged the suit schedule property, in favour of Union Bank of India Ranebennur. In that regard mutation dairy No.613, ME.No.705 and ME. No.712 were granted. In partition held among the family of defendant No.1. The suit schedule property fallen to the share of defendant No.1 and another property measuring 6 acre 3 gunta fallen to the share of defendant No.2. Accordingly, mutation dairy No.1016 dated 16.03.2002 was granted. Thereafter, the defendant No.1 was obtain, the loan from the bank and other private persons and dig the bore-well, obtained electricity connection from the KEB. Hence, in total he has obtained Rs.6,50,000/- form Union Bank of India by mortgaging the suit schedule property. The defendant No.1 by obtaining loan amount of Rs.10,00,000/- purchased



tractor and trailer. Hence, the defendants prays to dismiss the suit with cost.

11. Upon considering the pleadings of the parties, this court has framed the following;

RECASTED ISSUES

1. Whether the plaintiffs prove that, they are the owners in respect of the suit schedule property by virtue of certificate of Registration i.e., form No.10, vide order in LRF(A) SR-14,47,40/76 dated 23.06.1983 ?
2. Whether the defendant No.1 to 6 prove that, the deceased Ramappa voluntarily submitted vardi and entered their names to the suit property ?
3. Whether the defendant No.1 to 6 prove that, the suit is bad for non-joinder of necessary parties ?
4. Whether the defendant No.1 to 6 prove that, the suit is bad for non inclusion of all joint family properties ?
5. Whether the defendant No.1 to 6 prove that, the suit is barred by law of limitation ?
6. Whether the plaintiffs prove that, they are entitle for possession of the suit schedule property by ejecting the defendant No.1 ?
7. What order or decree?

12. The plaintiffs in order to substantiate the case, the plaintiff No.4 got examined as PW.1 and also another witness got examined as PW.2 and produced documents, as Ex.P1 to



Ex.P.23 and further during the cross examination DW.2 the learned counsel for plaintiffs has confronted the documents marked at Ex.P.24 to P.27. On the other hand, defendant No.2 got examined as DW.1 and another witness is examined as DW-2 and produced 24 documents at Ex.D1 to Ex.D.24.

13. Heard arguments on both side. Perused the notes of arguments filed by both the parties.

14. My findings on the above said issues are as follows:-

Issue No.1	: In the Affirmative
Issue No.2	: In the Affirmative
Issue No.3	: In the Negative
Issue No.4	: In the Negative
Issue No.5	: In the Negative
Issue No.6	: In the Affirmative
Issue No.7	: As per the final order, for the following;

REASONS

15. ISSUES No.1 AND 2 :- These issues are related to each other, hence, these issues are taken together for common discussion to avoid the repetition of facts and circumstances.

According to the plaintiffs, one late. Ramappa Lamani is husband of the plaintiff No.1 and father of plaintiff No. 2 to 5. The Land Tribunal Ranebennur granted occupancy right pertaining to the suit schedule property, in his favour and issued form No.10. Hence, the suit schedule property is self acquired property of late. Ramappa Lamani and he died on 25.12.1998 leaving behind plaintiffs and defendant No.7. The



defendants without title, right, or interest over the suit schedule property illegally got created mutation extracts and illegally possessed the suit schedule property. The plaintiffs are the absolute owner of the suit schedule property. Therefore, the plaintiffs shall prove that, the Land Tribunal Ranebennur granted occupancy right on the individual capacity i.e., in favour of Ramappa Lamani.

16. As against, it is the contention of the defendants No.1 to 6 that, late Ramappa Lamani was being kartha of the joint family, accordingly, he filed form No.7 on behalf of the joint family and the Land Tribunal Ranebennur granted occupancy right in favour of late Ramappa Lamani on behalf of joint family. Further, he paid the premium on behalf of the joint family. Since, partition was got effected among brothers of late Ramappa Lamani and the suit schedule property fallen to the share of defendant No.1 and 2. Therefore, the plaintiffs are no way concerned to the suit schedule property. Hence, the onus is on the defendant No.1 to 6 to show that, the suit schedule property granted occupancy right on behalf of the joint family and not on the individual capacity of the late Ramappa Lamani.

17. The heavy burden is on the plaintiffs to prove that, they are the absolute owners of the suit schedule property. The plaintiffs in order to prove the plaint averments, the plaintiffs No.4 filed her affidavit in lieu of examination in chief for herself and on behalf of other plaintiffs and got examined before the court as PW.1. Further, PW.1 reiterated the plaint averments. The plaintiffs in order to substantiate



the plaint averments have produced as many as 23 documents, marked as Ex.P.1 to P.23. Further, one Halavva is examined before the court as Pw.2.

18. Per contra, in order to discharge the onus of the defendants, the defendant No.2 himself and on behalf of other defendants filed his affidavit in lieu of examination in chief and by almost repeating the facts of the written statement averments. Further, in support of their defence, they have produced 24 documents marked as Ex.D.1 to D.24 and also got examined one Kallappa Lamani as DW.2.

19. As regards, the Land Tribunal granted the occupancy right of suit schedule property, on the individual capacity of Ramappa Lamani or it was granted on behalf of the joint family, is concerned.

The plaintiffs in order to show that, the suit schedule property granted by the Land Tribunal in favour of Ramappa Lamani on his individual capacity, in order to show the same produced Ex.P.1 to P.7 documents.

20. Ex.P.1 is form No.7, filed by Ramappa Tejappa Lamani stating that, he was cultivating 03 acre property from last 20 years. At backside of the said document, it extract that, he has filed the said form on behalf of self and for his Wife Sonavva, minor children Mallavva, Ningappa and on behalf of unmarried daughters Badalavva and Bheemavva. The said application filed on 24.12.1974. Ex.P.2 is one more form No.7, which was also filed by Ramappa Tejappa Lamani on 04.12.1978.



21. In Ex.P.1 further it could be seen that, the age of late. Ramappa Lamani shown, as on the filing of the form No.7 as 46 and as per his statement he had been cultivating the said agricultural land, as tenant for last 20 years. So, when he was 20 years, started for cultivating the said property, as an tenant.

22. Ex.P.3 is order copy of Land Tribunal passed in LRF(A)SR-144740/1976 dated 12.11.1976 wherein it observed that, Ramappa Tejappa Lamani been cultivating the said property bearing Sy No.3 measuring 5 acre of Channapur village from 1961-62 as tenant. Accordingly, the Land Tribunal Ranebennur has granted occupancy right in favour of Ramappa Lamani.

23. Ex.P.4 is case proceedings document, Ex.P.5 is statement given by one Sayyad Ameerjan stating that, in Sy. No.3 measuring 5 acre of Channapur village Ramappa Tejappa Lamani had been cultivating the said land, as tenant and given annual rent to him. Ex.P.10 is form No.10 issued in favour of Ramappa Tejappa Lamani on 23.06.1983. Accordingly, as per Ex.P.7 mutation extract No.318, was got effected in favour of Ramappa Tejappa Lamani, on the basis of occupancy right, with a condition to pay Rs.570/- and 5 ½ interest in 20 installments. Ex.P.23 is receipt for payment of assessment of Rs.820/- paid by Ramappa Tejappa Lamani on 24.03.1984.

24. So, on perusal of these documents which discloses that, form No.7 filed by late Ramappa Lamani on behalf of



himself, his wife, minor children and unmarried daughters. Further, as per order of the Land Tribunal Ranebennur depicts that, he has been cultivating the said property from the year 1961-62. Thus, when the application was filed by late. Ramappa Lamani then, he was 46 years. Further, the application was filed on 24.12.1974. Therefore, when the property cultivating by the late Ramappa Lamani i.e., 1961 he would be 33 years. Hence, the Ex.P.1 and Ex.P.3 documents discloses before the court that, late. Ramappa Lamani filed the form No.7 to declared him, occupancy right in respect of Sy No.3 of Channapur village.

25. In this regard, if oral evidence of both the parties are concerned, plaintiff No.4 examined herself as PW.1 and filed her chief affidavit. PW.1 elicited that, his father filed form No.7 before the Land Tribunal Ranebennur, on behalf of the joint family, thereafter, it was granted occupancy right in favour of his father. Thereafter, his father has paid the Rs.570/- on behalf of joint family to the Land Tribunal. Then, Sy.No.3 of Gangapur village (present Sy No.82) granted through mutation extract No.318.

26. The plaintiffs got examined, one witness by name Smt. Halavva Lamani as PW.2. She filed her chief affidavit stating that, the suit schedule property is absolute property of plaintiffs, but the defendants are illegally possessed the said property. During her cross examination elicited that, she does not know about nature of property. She never saw the property. Further, she does not know, when Ramappa Lamani got the said property. But, she elicited that, the



defendant No.1 and 2 are in possession and cultivating the said property. Further, she elicited that, defendant No.1 and 2 are paying land revenue, to the said suit schedule property.

27. As against, defendant No.2 filed his chief affidavit and got examined as DW.1. He elicited that, the plaintiffs and defendants are blood relatives and they are brother and sisters. It was denied the suggestion that, there were no partition was got effected, in respect of Sy No.106, Sy No. 56 and Sy. No.69 between Tejappa Lamani and children. But, the witness deposed that, on 05.04.1984 the partition was got effected and in that regard, he has produced the documents before the court. Further it suggested that, late. Ramappa Lamani filed form No.7, on his individual capacity and form No.10 issued in his favour by the Land Tribunal Ranebennur, but, the witness denied the suggestion and deposed that, on behalf of the joint family, it was granted in his favour. Further, it denied the suggestion that, by taking undue advantage of Ramappa Lamani was addicted to bad habit of drinking of alcohol and taking the advantage of the same got effected the false documents.

28. The defendants have also got examined one witness by name Kallappa Lamani as DW.2 and he filed his chief affidavit by saying that, the Land Tribunal Ranebennur has granted the occupancy right to Ramappa Lamani on behalf of the joint family. The defendants are in continuous peaceful possession and enjoying the suit schedule property. During his cross examination elicited that, the property allotted by the Land Tribunal Ranebennur, on behalf of the joint family.



But, he did not peruse the documents. During his cross examination confronted Ex.P.24 to P.26 documents. He denied the suggestion that, since, he got marriage with defendant No.1, hence, in order to help the defendants falsely deposing evidence before the court.

29. So, considering the evidence of both the parties, it suffice before the court that, during the cross-examination of PW.1, wherein he admitted regarding in the year 1984, his father and defendant No.2 were in joint family members. Further, he admitted that, his father filed form No.7 before the Land Tribunal Ranebennur, on behalf of the joint family. Even he admitted regarding, since, between his father and defendant No.1 dispute arises, accordingly, his father given varadi and got mutated in their favour. Further, PW.1 admitted regarding the possession of the suit schedule property, with defendant No.1 and 2 from the date of their names, entered into the revenue records. On the other hand, it was denied by DW.1 during his cross-examination that, the late. Ramappa Lamani filed Form No.7 on his individual capacity and not on behalf of the joint family. Further, he denied the suggestion that, Form No.10 issued by the Land Tribunal Ranebennur on the individual capacity of the Ramappa Lamani.

30. Further, from the evidence of DW.1 put forth before the court that, the partition was got effected among the children of Tejappa Lamani on 05.04.1984 and in the said partition Sy.No.103 measuring 2 acre 20 gunta and Sy No.56 allotted to the share of Ramappa Lamani. In order to



substantiate the same, produced Ex.D.24 document i.e., record of rights pertaining to Sy No.103/3 totally measuring 05 acre 01 gunta, but, in the said document, neither it stands in the name of Ramappa Lamani or in the names of plaintiffs. On the other hand, the RTC stands in the name of LR's of Venkappa and LR's of Sheshappa. Further, the defendants have not produced any other documents, in respect of Sy No.56 to show that, the said property allotted in favour of Ramappa Lamani.

31. So, if the partition was got effected, as per the evidence of DW.1 and allotted Sy No.103/3 and Sy N.56 in favour of Ramappa Lamani, then, the said properties would have stands in the name of either Ramappa Lamani or after his death, in the name of his legal heirs. But, in order to show the same, no document is put forth before the court.

32. On perusal of the Ex.P.1/ 3 i.e., Form No.7 which discloses that, late Ramappa Lamani had filed Form No.7, on his behalf and on the behalf of his wife, minor children and unmarried daughters. Even the order of the Land Tribunal as per Ex.P.3, which extract before the court that, late. Ramappa Lamani had been cultivating the suit schedule property, from the year 1961-62, i.e., from the age of 33 years. Further, either in the Form No.7 or in the order of Land Tribunal or in the statement given by the landlord, wherein not shown that, earlier the property cultivated by father of Ramappa Lamani or his brothers as joint family members. The date when Ramappa Lamani started



cultivating, the said agricultural property, which clearly shows that, he alone cultivating the said land, as tenant.

33. Now it is necessary to extract the provisions of Karnataka Land Reforms Act 1961 , in order to determine, under what circumstances the Land Tribunal granted the occupancy right, whether it granted on individual capacity or on the benefits of the members of the family or joint family.

34. Sec.2 (34) of the Karnataka Land Reforms Act 1961 , reads as follows:

“Section 2(34): “tenant” means, an agriculturist who cultivates personally the land he holds on lease from a landlord and includes:

(i) a person who is deemed to be a tenant under Section 4.

(ii) a person who was protected from eviction from any land by the Karnataka Tenants (Temporary Protection from Eviction) Act, 1961.

(iia) a person who cultivates personally any land on lease under a lease created contrary to the provisions of section 5 and before the date of commencement of the Amendment Act.

(iii) a person who is a permanent tenant;

(iv) a person who is a protected tenant.

Explanation.—A person who takes up a contract to cut grass, or to gather the fruits or other produce of any land, shall not on that account only be deemed to be a tenant;

35. Sec.2 (11) of Karnataka Land Reforms Act, 1961 reads as follows;

Sec.2(11) “to cultivate personally” means to cultivate land on one's own account,—



- (i) by one's own labour, or*
- (ii) by the labour of any member of one's family, or*
- (iii) by hired labour or by servants on wages payable in cash or kind, but not in crop share, under the personal supervision of oneself or any member of one's family;*

[Explanation I.—In the case of an educational, religious or charitable institution or society or trust, of a public nature capable of holding property, formed for educational, religious or charitable purpose, the land shall be deemed to be cultivated personally if such land is cultivated by hired labour or by servants under the personal supervision of an employee or agent of such institution or society or trust;

Explanation II.—In the case of a joint family, the land shall be deemed to be cultivated personally, if it is cultivated by any member of such family.

Explanation III.—xx

36. As per the definition given in The Karnataka Land reforms Act 1961, A tenant is an agriculturist, who cultivates personally the land. Further, it says that, a person who is permanent and protected tenant, also called tenant, under the said definitions.

37. The word person is not defined under the provisions of The Karnataka Land Reforms Act, 1961, but, as per the definition given in **General clauses Act**, same is extracted herein below;

Sec.42 of General Clauses Act,
reads as follows;



42. “person shall include any Company or Association or Body of individuals, whether incorporated or not”.

38. So, on combined reading of Sec.2(34) of Karnataka Land Reforms Act, 1961, which says, a person cultivating the land personally and ‘a person’ as defined in Sec.42 of General clauses Act, ‘a person’ means not an individual person, but, which includes other persons or corporate. Further, as per Sec.2(11)(ii) of the Karnataka Land Reforms Act, specifically reads that, the labour of any member of one’s family, it includes personally cultivation. Thus, when one of the family member cultivating the agricultural land, it comes within the definition of cultivation personally. Moreover, as per the definition of General Clauses Act, the word ‘Person’ includes Company or Association or Body of individuals. Therefore, the person cannot be said that, a single person and ‘tenant’ means, who cultivate the land personally by holding lease.

39. Now coming to the definition of ‘family’ and ‘joint family’ given under the provisions the Karnataka Land Reforms Act, 1961. which are reads as follows;

40. Sec.2(12) of Karnataka Land Reforms Act 1961 reads as follows;

Sec. 2 [(12) “family” means,—

(a) in the case of an individual who has a spouse or spouses, such individual, the spouse or spouses and their minor sons and unmarried daughters, if any;



(b) in the case of an individual who has no spouse, such individual and his or her minor sons and unmarried daughters;

(c) in the case of an individual who is a divorced person and who has not remarried, such individual and his minor sons and unmarried daughters, whether in his custody or not; and

(d) where an individual and his or her spouse are both dead, their minor sons and unmarried daughters;]

41. Sec.2(17) of Karnataka Land Reforms Act 1961, reads as follows;

Sec. 2(17) of the said Act reads as follows:

“2 (17) “joint family” means in the case of persons governed by Hindu Law, an undivided Hindu family, and in the case of other persons, a group or unit the members of which are by custom joint in estate or residence;

42. On combined perusal of definition of ‘family’, which includes spouse, minor sons and unmarried daughters. Further as per the definition of ‘joint family’, which means the member of the joint family, in case of parties are other than, governs by the Hindu law, then, a group or unit the members, they are by custom joint in estate. Therefore, even though, the application filed by individual person, but, as discussed above personally cultivating the agricultural property, which also includes cultivating by members of once family.



43. Therefore, as per the definition given, under provisions of The Karnataka Land Reforms Act, 1961, wherein the 'family' and 'joint family' shown differently. The 'family' which includes only spouse, minor sons and unmarried daughters and which does not include other family members. On the other hand, as per the 'joint family' definition, which includes undivided Hindu joint family members. If the family governs by Hindu law.

44. If this court again consider the Ex.P.1 and P.3 documents, which extract before the court that, the application filed on behalf of the 'family', as per Sec.2 (12) of the Karnataka Land Reforms Act. The Form No.7 by filed by Ramappa Lamani, on behalf of himself, for his spouse, minor sons and unmarried daughters. Further, he has given declaration that, he has not owned any other property, for his enjoyment. Therefore, the order of the Land Tribunal, and statement given by landlord, which are corroborates with each other, regarding the Form No.7 filed on the individual capacity and on behalf of the family of Ramappa Lamani.

45. On the other hand, the contention of the defendants that, Ramappa Lamani was elder son and being Karta of the joint family, on behalf of the joint family filed Form No.7 to grant occupancy right.

46. The defendants in order to substantiate the same, have filed genealogy annexed with the plaint. And in the genealogy it shown that, one Tejappa lamanai had two wives first wife Dhamakavva given birth to one Venkappa. Further, it is averred that, second wife Jeenakavva given birth to



Sheshappa and Ramappa. The defendant No.1 and 2 are the children of Venkappa. The plaintiff No.1 is wife, plaintiffs No.2 to 5 and defendant No.7 are the children of Ramappa.

47. It is worth to note here that, in the Written statement of defendants No. 1 and 2 at page 16 and para W) shown that, “Sy. No. 80/05 sold by Ramappa to his elder brother Sheshappa.” So this pleadings and genealogy shown that, Sheshappa is elder than Ramappa.

48. In this regard, when the questions are put during the cross-examination of PW.1 wherein he admitted that, Tejappa Lamani’s first wife Dhamakavva given birth to Venkappa and he got married with Ramanavva and given birth to six children and they are the defendants in this case. The second wife of Tejappa Lamani is Jeenakavva, who is his grandmother and she had given birth to Sheshappa and Ramappa. One Roopalevva is the wife of Sheshappa and she given birth to six children.

49. During the evidence of PW.1, it was suggested that, in the year 1984, the father of the plaintiffs and defendant No.2 were joint family members, for the said suggestion the witness replied that, may be they are in joint. Further, it was suggested that, his father was managing the family, as he being kartha, for that, question the witness replied that, he does not know, as he was minor at that time.

50. On the other hand, during the cross-examination of DW.1, elicited that, one Omaleppa is propositus, he has



two children Roopaleppa and Tejappa. Roopaleppa got married with Janakavva and given birth to Rajappa and Lachappa. Further the witness deposed that, the said Roopaleppa died and he did not get marry with Janakavva, but, there was a relationship between them. Tejappa having relationship with Janakavva, hence, Sheshappa, Ramappa and one Kelavva were born. The witness further elicited that, in his affidavit shown that, Tejappa got second marriage which is false, as they were not got married, but, as per their tradition, they had relationship. It was denied that, one Benakappa managing the family, as he being elder of the family. But, witnesses deposed that, Ramappa was manager of the family.

51. So, considering the evidence of both the parties, wherein it suffice before the court that, PW.1 denies that, Ramappa was managing the family. On the other hand, DW.1 during his cross-examination elicited that, Tejappa had not got second marriage with Tejavva, but, as per their tradition there was relationship between them and out of the said relationship Sheshappa Ramappa and Kalavva were born.

52. Thus, considering the evidence of the parties and genealogy, the first wife's son Venkappa was elder person than, Sheshappa and Ramappa. Since, DW.1 deposed before the court that, Tejappa was not got married with Janakavva and she was the legally wedded wife of one Rupaleppa, who is brother of Tejappa and given birth to Rajappa and Lachappa. So, the birth of Sheshappa and Ramappa which was not legally. As, Tejappa was not got



married with Janakavva. Further, Ramappa was the second son of Janakavva and elder son was Sheshappa, then, how Ramappa becomes the Manager of the said family, not explained by the defendants. Therefore, the question of Ramappa managing the family does not arise. Even PW.1 denies the said suggestion during his cross examination. On the other hand, the defendants in order to establish before the court that, Ramappa was managing the family, no iota of evidence placed before the court.

53. Yet another contention of the defendants that, in the partition held among the brothers of Ramappa Lamani in the family settlement. Accordingly, the suit schedule property fallen to the share of defendants No.1 and 2. But, the defendants in order to substantiate the same, they have not produced any iota of documents before the court. Though, in Ex.D.6 mutation extract No.329, shown the property allotted in favour of defendant No.1, and 2, as per the family settlement, but, in order to show that, there was division took place among the family members, no documents are placed before the court.

54. However, during the cross-examination of DW.1 elicited that, Sy No.103 measuring 2 acre 20 gunta and Sy No.56 fallen to the share of Ramappa, but, in order to substantiate the same, no piece of documents placed before the court.

55. It is worth to note here that, as per the pleadings of the Written statement, it shown that, late Ramappa Lamani



received property bearing Sy No.80 measuring 5 acre property in his share, but, he has sold the said property in favour of Sheshappa Lamani. In this regard, the defendants have produced Ex.D.4 RTC, pertaining to Sy No.80/1 measuring 5 acre 13 gunta stands, in the name of children of Sheshappa Lamani.

56. On the other hand, the plaintiffs have confronted Ex.P.24 to P.27 during the cross-examination of DW.2. Ex.P.25 is Form No.7 filed by Sheshappa Tejappa Lamani in respect of Sy. No.1 of Channapur village, wherein, it shown that, he is cultivating the said property from the date of his father. Further he filed the application on self and filed the said application on 13. 08.1976. Ex.P.24 is order of the Land Tribunal Ranebennur in LRF (A)SR-50,12 24 29 30/1976 dated 26.11.1976. The order of the Land Tribunal it shows that, Sheshappa Tejappa Lamani was cultivating the property bearing Sy No.1 measuring 5 acre 13 gunta from last 20 years as tenant. Accordingly, Land Tribunal, Ranebennur granted the occupancy right in his favour.

57. The plaintiffs have also produced Form No.10, which was granted in favour of Sheshappa S/o Tejappa Lamani in respect of Sy No.1 measuring 5 acre 13 gunta of Channapur village. As per Ex.P.26 the mutation extract No.224 dated 16.07.1980 was got effected in favour of Sheshappa Lamani, on the basis of Land Tribunal Order. Ex.P.27 hand written record of rights, pertaining to Sy No.80/1 of Gangapur village from the year 1982- 1987-88 wherein, Sheshappa Tehappa Lamani name was deleted and



inserted the name of his Lrs. Further, in the document it could be seen that, in Col No.1 earlier Sy No.1 was put into bracket and the name of the village Channapur is also put into bracket and inserted as Gangapur.

58. Thus, considering the Ex.P.24 to 27 documents, which clearly suffice before the court that, Sy No.80/1 measuring 5 acre 13 gutna granted occupancy right in favour of Sheshapp Tejappa Lamani. Accordingly, as per Ex.D.4 RTC the legal heirs of Sheshappa Lamani have inherited the said property. In this regard during the cross-examination of PW.1, wherein it suggested that, Sy No.80/1 measuring 5 acre property alienated by his father in favour of Sheshappa. But, witnesses deposed that, he does not know.

59. On the other hand, DW.1 in his chief examination also taken, a contention regarding the partition taken and Ramappa sold the said property in favour of his brother Sheshappa. But, during his cross-examination, denied the suggestion that, since, in the ancestral properties no partition was got effected and no properties allotted to the share of Ramappa in that, no partition was got effected. Under such circumstances, Ramappa has no right to alienate the property in favour of Sheshappa. Further, he denied the suggestion that, as per Ex.P.25 Sy No.80 granted in favour of Sheshappa. Then, the witness deposed that, he does not know.

60. DW.2 in his chief affidavit contended that, Sy No.80/1 measuring 5 acre property fallen to the share of



Ramappa Lamani and he has sold the said property in favour of Sheshappa Tajappa Lamani. During his cross-examination elicited that, Sy No.80 property fallen to the share of Ramappa, in the family settlement. But, as pr the document shown before him, the Sy No.80/5 property granted in favour of Sheshappa. He admitted that, the Tahsildar has issued occupancy right in favour of Sheshappa and mutation was also got effected. He admitted the Ex.P.24 to P.27 documents.

61. Therefore, though the defendants in their written statement and in the evidence DW.1 and DW.2, taken a contention that, Sy No.80/1 of Gangapur village fallen to the share of Ramappa and he has sold the said property in favour of his brother Sheshappa, but, on perusal of the documents marked as Ex.P.24 to P.27, for the said property granted the occupancy right, by the Land Tribunal Ranebennur, in favour of Sheshappa Lamani. After his death the property succeeded by his children.

62. It is worth to note here that, the defendants in order to discharge their onus and to show that, there was a family settlement and in that Sy No.80/1 of Gangapur village fallen to the share of Ramappa Lamani and he sold the said property to his brother Sheshappa Lamani. For the proof of the same, no piece of documents, put forth before the court. On the other hand, Ex.P.24 to P.27 documents clearly probabalize before the court that, for the said property granted occupancy right in favour of Sheshappa Lamani.



63. It is relevant to note here that, the defendants, in their written statement pleaded that, since, Ramappa Lamani being Kartha and managing the joint family, accordingly on behalf of joint family, he filed the Form No.7, in respect of suit schedule property. If that being the true fact, then on the similar time, how Sheshappa Lamani filed Form No.7 in his name stating that, from last 20 years being cultivating the Sy No.1 of Channapur village, as tenant. If the property granted in favour of Sheshappa Lamani was his self acquired property, then, how the said property was also thrown into the joint stock i.e., in the joint family property. Further, how the said property, allotted in favour of Ramappa Lamani, as per family settlement. Therefore, it creates suspicious regarding late Ramappa Lamani was manager of the joint family and he filed form No.7 on behalf of the joint family in respect of the suit schedule property.

64. If that fact is true, then Sheshappa Lamani has not filed Form No.7 in respect of Sy No.1 of Channapur village, as at that time, Ramappa Lamani was manager of the family and not Sheshappa Lamani. Therefore, if the property allotted to Sheshappa Lamani also considered as joint family and allotted in the family settlement in favour of Ramappa Lamani, then, as per the contention of the defendants Ramappa Lamani being manager of the joint family, he ought to have also filed Form No.7 in respect of Sy No.1 of Channapur village. Under such circumstances, when Ramappa Lamani has not filed Form No.7, being the manager of the joint family, in respect of Sy No.1 of Channapur village,



which itself it shows before the court that, late Ramappa Lamani was not manager of the joint family.

65. Therefore, when Ramappa Lamani was not manager of the joint family, then the question of he filed Form No.7 in respect of joint family does not arise at all. Once again I repeat here that, as per Ex.P.1 and P.3, which clearly shows before the court that, late. Ramappa Lamani himself cultivated the suit schedule property, as tenant from the age of 33 years and cultivated from the year 1961-62. Further, he applied occupancy right on behalf of himself, spouse, minor sons and unmarried daughters. Hence, if the properties jointly cultivated by joint family members, then, it would shown the father of Ramappa Lamani, also being tenant of the said property or in the application it would shown, he has cultivated the said property through his brothers also. But, either in Ex.P.3 or in Ex.P.5 in the order or in the statement of landlord shown regarding the said property cultivated through his brothers and other family members, but, no such averments found in the said document.

66. On the other hand, during the cross-examination of DW.1, himself deposed before the court that, Janakavva is not the second wife of Tejappa. The said late Janakavva got married with one Ramappa brother of Tejappa and begotten two children by name Rajappa and Lachappa. After the death of Ramappa his brother Tejappa having relationship with Janakavva and begotten the children of Sheshappa and Ramappa.



67. So, these admissions also depicts before the court that, Sheshappa and Ramappa were not legally born with the relationship of Tejappa. However, the first wife of Tejappa by name Dhamakavva given birth to Venkappa. Therefore, Venkappa being elder son, he would have manage the family after the death of Tejappa Lamani. But, Ramappa not being valid relationship with Tejappa, he cannot be manager of the said family. Further, Sheshappa being the elder brother of Ramappa, then instead of Sheshappa, why the younger brother Ramappa was manager of the family, not explained by the defedants. Therefore, this is yet another fact, to consider that, Ramappa was not manager of the joint family.

68. So, scrutinizing the overall and documentary evidence, this court is of the opinion that, though in the cross-examination of PW.1 admitted that, his father filed form No.7 to the Land Tribunal Ranebennur for the occupancy right, on behalf of joint family. Further he admitted that, on behalf of the joint family, his father given Rs.570/- to the Land Tribunal Ranebennur. But, the documents placed by the plaintiffs, which are contradiction with the evidence of PW.1. On the other hand, the defendants in order to discharge their onus and show that, late Ramappa Lamani filed Form No.7, in respect of the suit schedule property before the Land Tribunal Ranebennur, on behalf of joint family not placed any documents before the court. Even they have not produced documents to show that, prior to file Form No.7, they have also cultivated the said property jointly as tenant. Therefore, the admission of PW.1 which is totally contradiction placed by them.



69. It is well settled law that, the primary documents prevail over the oral evidence. In this case also though the admission of PW.1 shows the Form No.7 filed on behalf of joint family, but, there is no any corroboration evidence put forth, before the court by the defendants by rebutting the documentary evidence placed by the plaintiffs. Therefore, the documents produced by the plaintiffs which prevail oral the evidence of the PW.1. Under such circumstances, it is proved before the court that, late Ramappa Lamani filed Form No.7 on behalf of the 'family', as per Sec.2(12) of Karnataka Land Reforms Act, 1961 and not filed the application on behalf of the 'joint family', as per Sec.2 (17) of Karnataka Land Reforms Act, 1961.

70. To the contrary, though the defendants in their written statement have taken several contentions regarding the application filed on behalf of joint family, but, in support of the same, not placed any iota of documents. Accordingly, the contention of the defendants cannot be accepted without any reliable or cogent evidence before the court. Hence, this court is of the opinion that, the suit schedule property is self acquired property of late Ramappa Lamani, as he filed Form No.7, in respect of his family and Land Tribunal Ranebennur has granted occupancy right on his individual capacity.

71. *As regards to late Ramappa Lamani voluntarily given varadi and enter the names of the defendant No.1 and 2, in respect of the suit schedule property, which is valid transfer is concerned.*



It is the contention of the defendants that, since the brothers are not intending to live jointly, accordingly got effected family settlement and in respect of suit schedule property, measuring 5 acre the plaintiffs and late Ramappa Lamani given varadi to the revenue officials and also they have signed on U form notice, by voluntarily allotting the said property in favour of defendants No.1 and 2. Hence the mutation dairy No.329 was got effected and the plaintiffs are not having any right, title over the said property.

72. As against, the plaintiffs claiming title over the suit schedule property, on the basis of the occupancy right granted in favour of Ramappa Lamani, by the Land Tribunal Ranebennur. Further, they have also sought recovery of possession and damages. Therefore, the plaintiffs have denied the varadi given to the Revenue officials.

73. The defendants in order to prove that, the plaintiffs have given varadi to the Revenue Department has produced original varadi copy marked as Ex.D.23 and notice is marked as Ex.D.24. Ex.D.23 varadi document discloses that, Ramappa Tejappa Lamani given varadi to the Village Accountant and in the varadi it recited that, since brothers are unable to live jointly accordingly, as per the family settlement divided the share, hence, he has given for enjoyment and possession in favour of Sakrappa S/o Ganagappa Lamani and Somappa Venkappa Lamani dated 16.04.1984. On the said document shown thumb impressions and endorsed as Ramappa Tejappa Lamani, Ningappa Ramappa Lamani , Moteppa Ramappa Lamani and



Sonavva Ramappa Lamani and also four witnesses shown on the said document.

74. Ex.D.24 is notice to get mutate in favour Sakreppa and Komaleppa issued notice and the said notice issued on 05.06.1984 and thumb impressions of five persons shown on the said document. So, on the basis of the said varadi, the mutation extract was got effected, as per Ex.D.6 in MR No.329 dated 05.06.1984. The notice was given on 05.06.1984 and on the same date, the mutation was got effected.

75. As per Ex.D.17 mutation extract No.495 waraadi given on 15.06.1988, which discloses that, defendant No.1 and 2 in order to avail loan from the bank, the name of the defendant No.1 is deleted from the RTC and it stands in the name of defendant No.2 Sakreppa. Thereafter, as per Ex.D.1 and D.2 are hand written record of rights pertaining to Sy No.82 from the year 1888-89 -90 stands in the name of Sakrappa Gangappa Lamani.

76. Further, as per Ex.D.18 mutation extract No.613 discloses that, defendant No.2 Sakreppa borrowed loan of Rs.30,000/- from the Union Bank of India. Accordingly, mutation was got effected and charge was inserted. Further as per Ex.D.19 MR No.705 dated 26.07.1993, again defendant No.2 obtained loan of Rs.40,000/- from Union Bank of India and charge was inserted. Finally, as per Ex.D.20 mutation extract No.712 dated 15.09.1993 loan amount of Rs.20,000/- borrowed by defendant No.2 from



Union Bank of India. Accordingly, mutation was got effected and charge was inserted.

77. It is worth to note here that, as per Ex.D.7 mutation extract No.1016 dated 01.01.2002, the mutation was got effected between defendant No.1 and 2, wherein they have amended the partition accordingly, entire 5 acre property given to defendant No.1. According, to as per Ex.D.3 the RTC stands in the name of defendant No.1, pertaining to Sy No.82 X 1.

78. The defendants have also produced Ex.D.11 Khata extract, pertaining to Sy No.82/*, Sy No.80/+2A and Sy No.103/3 stands in the name of defendant No.1, as per kahata No. 331. As per Ex.D.12 to D.14 the defendant No.1 has paid land revenue to the Village Accountant Gangapur.

79. So, on conjoint reading of the said documents, it depicts before the court that, as per Ex.D.23 to D.24 on the basis of varadi, as per Ex.D.6 MR No.329 was got effected and inserted the names of defendant No.1 and 2, over the suit schedule property in the revenue records. Thereafter, it was transferred in the name of defendant No.2 availed loan from the bank, accordingly for minor irrigation he obtained loan from the Union Bank of India. Further, the defendant No.1 and 2 have been paying the land revenue of the suit schedule property. Thus, these documents clearly extract before the court that, the possession of the suit schedule property with the defendants, after the varadi given as per Ex.D.23 to the revenue department.



80. For the varadi given to the revenue department and also notice given to the plaintiffs are concerned, during the cross-examination of PW.1 elicited that, the suit schedule property stands in the name of defendant No.1 and it was inserted in the year 1984. from the date of the same, they are in possession and cultivating the suit schedule property. Further, he elicited that, in between his father and defendant No.2 the relationship was strained, due to which, her father has given varadi to mutate in the name of his brothers.

81. So, PW.1 admitted that, his father has given varadi to mutate the name of the defendant No.1 and 2, in the suit schedule property. But, he denies the thumb impression of himself and his mother and others, on the notice. Further, the original document put forth before the court, and the witness denied the signature of himself, his fathers and other plaintiffs. He admitted that, on the basis of the said varadi, the mutation was granted as MR No.329 and same is till in existence.

82. Thus, the varadi given by the father of the plaintiffs is admitted by PW.1 during his cross-examination, but, he denied the thumb impressions inserted on Ex.D.23 and also on notice marked as Ex.D.24. On the other hand, on perusal of the other documents, the mutation was got effected, thereafter, the defendant No.1 and 2 have been in possession and enjoying the suit schedule property by obtaining loan from the Union Bank of India.



83. It is worth to note here that, as per the contention of the defendants, late. Ramappa Lamani given varadi, as per the family settlement held among the joint family members. But, in the written statement the defendants have not pleaded, when the partition was got effected and which properties were allotted in favour of Ramappa Lamani. Even they have not pleaded regarding in the family settlement which property allotted in favour of Sheshappa Lamani.

84. In this regard, during the cross examination of DW.1, at para 2 he denied the suggestion that, in respect of Sy No.106, Sy No.56 and Sy No.69, no partition was got effected among three children of Tejappa Lamani. But, he deposed that, on 05.04.1984 partition was got effected and in that regard, he has produced the documents before the court. It was suggested that, he has not produced partition deed before the court, but, same was also denied.

85. Again, DW.1 elicited that, in favour of Ramappa Lamani, in the family settlement allotted the property bearing Sy No.103 measuring 2 acre 20 gutna and Sy No.56 these, two properties fallen to the share of Ramappa Lamani.

86. So, considering the admission given by DW.1, which extract before the court that, on 05.04.1984 the partition was effected among three children of Tejappa Lamani. And in that partition Sy No.103 and Sy No.56 allotted in favour of late Ramappa Lamani. But, as per Ex.D.21 bearing Sy No.103/3 measuring 5 acre 1 gunta in that, property the names of either Ramappa or his children



not shown in the said document. On the other hand the name of the children of Sheshappa , defendant No.1 and his brothers name shown in the said document.

87. The defendants have not placed any documents in respect of Sy No.56. Even DW.1 as admitted before the court that, he has not produced the documents in respect of family settlement deed or partition deed or mutation extract to show that, there was family settlement got effected, accordingly the suit schedule property fallen to the share of defendant No.1 and 2. On the other hand, as per Ex.D.22 the RTC pertaining Sy No.82 stands in the name of defendant No.1. Therefore, no piece of documents put forth by the defendants in order to show that, on 05.04.1984, there was family settlement among three children of Tejappa Lamani.

88. It is worth to note here that, if really family settlement was taken place, then the defendants would have placed, at least record of rights or mutation extracts, in order to show that, family settlement was effected and they are separately cultivating the suit schedule property.

89. It is pertinent to note here that, the defendants pleaded in the written statement, at page 16 in para (W) that, Sy No.80 fallen to the share of Ramappa Lamani and he has sold the said property in favour of his elder brother Sheshappa Lamani. But, this question is discussed by this court, in above paras. Therefore, Ex.P.24 to P.27 documents clearly establish before the court that, late Ramappa Lamani has not sold Sy.No.80 in favour of Sheshappa Lamani. On



the other hand, in order to prove the said fact, the defendants neither they have produced the sale deed nor produced mutation extracts. Hence, it clearly shows that, Sy No.80 was not allotted in favour of Ramappa Lamani.

90. The Hon'ble high Court of Karnataka in the case of **Hanumantha Bheemappa Sanadi and others Vs Rudrappa Thammanna and others reported in ILR 2005KAR3430** wherein the Honble at para No.14 held as follows;

Held:

“ The specific case of the defendants is that, there was a partition of the properties in the year 1981 and said partition could be proved only by discharging the burden of proceeding oral and documentary evidence in that behalf and the oral and documentary evidence adduced in the present case referred to above comprising of the evidence of DW.2 and the joint varadi on the basis of which entries were made is not helpful to the defendants to prove partition by metes and bounds. In the year 1981 as the joint varadi does not state the manner in which the property was partitioned between Yamanappa, Bheemappa and Tammani and it is clear that the two branches of Yamanappa and Bhimappa, 2 1/3rd share was given allotted 15 acre land in the name of Yanamanppa and Bheemappa. Remaining 36 acre of land entered in the name of Tammani and when once it is held that, the wardi Ex.D.58 and D.59 and mutation entry Ex.D.60 and 61 would not prove the prior partition”.



91. Therefore, the Hon'ble Court in the said judgment, it is held that, the varadi given by the parties which does not prove of partition. The parties have to prove the partition among them by proceeding oral and documentary evidence. Mere varadi given, which itself it does not prove the prior partition. In this case, also as per Ex.D.24 given varadi, but, on the basis of the said varadi, it does not prove the partition got effected among three children of Tejappa Lamani. Therefore, the defendants ought have placed oral and documentary evidence, for the proof of partition held among them. Under such circumstances, the defendants have not produced any documents, in proof of partition by way of family settlement was got effected among the children Tejappa Lamani and in that partition, the suit property fallen to the share of defendants No.1 and 2.

92. Now the question before the court is mere execution of the varadi, without any registration document and only on the basis of varadi or mutation extract, can transfer the title to another person.

93. In this regard it is necessary to draw the attention of the **Sec.5 of the Transfer of property Act 1982**, which defines transfer of property, same is extract herein below ;

5. In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons; and "to transfer property" is to



perform such act. In this section “living person” includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.

94. The transfer of property act envisages five different modes for transferring a property. But, the provisions speaks in order to transfer the property it requires registration. One of the mode is by way of sale. If the property value is exceeds Rs.100/- and that document must be in registered.

95. The Hon'ble High Court of Karnataka in the judgment reported in **2019(2) 11 KCCR 1115(DB) between “Siddanagouda Naturals and others Vs Smt. Kashibai @ Kantamma and others'**, wherein the Hon'ble court has held at para 40 that ;

B. *Evidence Act. 1872 Sec 110 document of title- It is a well settled law that no title can be conferred on the basis of the revenue records. 'Varadi' is not a document evidencing the transfer of immovable property, it is trite to be legal must be in accordance with provisions of transfer of property Act 1882. In the absence of registered document of transfer of immovable property, varadi per se cannot be construed as transfer of immovable property, the nature of the varadi the identify of the persons who gave the report and recorded are relevant material particulars and in the absence of the same, no credential value can be given to such enteries.*



96. On plain reading of the above provision no title can be confirmed on the basis of the revenue records. varadi is not a document evidencing the transfer of immovable property. The transfer must be in accordance with the provisions of transfer of property Act 1882. Therefore, on the basis of the varadi the title cannot be passed even without there being partition effected among the family members.

97. The Hon'ble Apex court in the case of **Union of India and others V/s Vasavi co-operative Housing society Ltd. And others** reported in **(2014) 2 SCC 269** , it is held that :

In a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. Even if the title set up by the defendants is found against them, in the absence of the establishment of the plaintiff's own title, the plaintiff must be not suited.

98. The Hon'ble Apex Court of India in the case of **Prabhagiya Van Adhikari Awadh Van Prabhag Vs. Arun Kumar Bharadwaj (dead) Thr. Lrs and others, in Civil Appeal No.7017/2009 decided on 5.10.2021** has held that;



“the revenue record is not a document of title. Therefore, even if the name of the lessee finds mentioned in the revenue records, but such entry without any supporting documents of creation of lease contemplated under the Forest Act is in consequential and does not create any right, title or interest over 12 bighas of land claimed to be in possession of lessess as a lessee of the Down Sabha”.

99. Further it is also held by the **Hon'ble Apex Court of India in Civil Appeal No.1330/2019 between Smt. Bhimabai Mahadeo Kambekar (D) Th. Lr Vs. Arthur Import and Export Company & Ors.** Has held at para 8 as follows:

“This Court has consistently held that mutation of a land in the revenue records does not create or extinguish the title over such landlord it has any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question.”

100. On conjoint reading of these judgments, it is clear that, mutation entries do not confirm title. They serve a fiscal purpose, i.e., to realize tax from the person whose name is recorded in the revenue records. Further, even if the entries in the record of rights carry evidential value, that it self could not confirm any title over the property.

101. Therefore, the varadi given by Ramappa Lamani which itself it not transfer of immovable property in favour of defendant No.1 and 2, without proving the partition was got effected among three children of Tejappa Lamani. In this



case, the defendants have utterly failed to produce reliable and cogent evidence before the court, for the proof of partition was got effected among the children of Tejappa Lamani and in that partition, the suit schedule property fallen to the share of defendant No.1 and 2, accordingly late Ramappa Lamani given varadi, as per Ex.D.23. Hence, when, title is not transferred through the varadi and not proved the partition by way of family settlement. Then, even though the varadi given by Ramappa, but, title of the suit schedule property can not be transferred in favour defendants No.1 and 2.

102. On the other hand, though the defendants in order to prove that, in Ex.D.23 and D.24 varadi and U form notice signed/ affixed thumb mark by the plaintiffs No.1 to 6 and produced the said documents, but, on perusal of the said document, wherein it shows only five thumb impressions. If Ramappa Lamani and his six children affix their thumb impressions, then, there would be seven thumb impressions. But, in Ex.D.23 shown four thumb impressions and in Ex.D.24 shown five thumb impressions. In this regard during the cross examination of PW.1, wherein he categorically denies the signature/ thumb impressions of himself and other plaintiffs on Ex.D.23 and D.24.

103. Therefore, the burden is on the defendants to show that, the plaintiffs No.1 to 5 and defendant No.7 have inserted their thumb impressions on Ex.D.23 and D.24. But, on perusal of the original documents, wherein 8 thumb impressions should be shown, but, only shown four thumb



impression on Ex.D.23 and five thumb impression on Ex.D.24. Accordingly, the defendants have not proved specifically regarding, who had affixed their thumb impressions on Ex.D.23 and D.24. Hence, though PW.1 admitted during his cross-examination that, Ramappa has given varadi to the revenue officials, but, not proved the other plaintiffs have affixed their thumb impressions, on Ex.D.23 and D.24. Under such circumstances, the defendants have failed to prove the signatures/ thumb impressions of plaintiffs No.1 to 5 and defendant No.7 on Ex.D.23 and D24.

104. Thus, over all considering the above discussion, this court is of the opinion that, the plaintiffs have successfully proved before the court that, Ramappa Lamani alone filed Form No.7 to grant occupancy right in respect of suit schedule property before the Land Tribunal Ranebennur, in favour of his family. Accordingly, the Land Tribunal granted the occupancy right in favour of Ramappa Lamani on his individual capacity. But, on the other hand, the defendants have failed to prove late Ramappa Lamani filed Form No.7, on behalf of the joint family. Therefore, the suit schedule property was self acquired property of late Ramappa Lamani. Accordingly, the plaintiffs are owners in respect of the suit schedule properties.

105. On the other hand, the defendants have failed to prove that, the title of the suit schedule property transferred, in their favour on the basis of the varadi given by Ramappa Lamani. Though, it is proved before the court that, Ramappa Lamani given varadi but, the title of the suit schedule



property does not transfer in favour of defendant No.1 and 2.
Accordingly, I answer Issue No.1 in the Affirmative, and issue No.2 in the Affirmative.

106. ISSUE No.5: The defendants in their written statement further taken a specific contention that, since, the mutation extract No.329 got effected on 05.04-1984. Therefore, after 38 years lapsed the present suit, the suit is filed for the relief of declaration, which is barred by law of limitation. Hence, prays to dismiss the suit, as barred by time.

107. As against, the learned counsel for plaintiffs argued before the court that, when recently plaintiffs came to know about the property granted in favour of their father, immediately sought for records and requested the defendants to hand over the illegal possession, but, it was postponed. The plaintiffs again, on 15.11.2021 asked the defendant No.1 and his family members to vacate and hand over the suit schedule property, but, it went in vain. Therefore, the plaintiffs issued legal notice to the defendant No.1 on 25.11.2021 by registered post to defendant No.1 and same was served, but, the defendant No.1 has given false answer to the said legal notice. Therefore, the suit is filed within its limitation.

108. The plaintiffs in order to show that, he has filed suit within a limitation produced Ex.P.15, i.e., the office copy of the legal notice issued by plaintiffs advocate on 25.11.2021, by demanding to hand over the suit schedule



landed property in favour of his clients, within seven days from the date of service of this notice. Ex.P.16 is postal receipt and Ex.P.17 is acknowledgment receipt, which is duly served upon the defendant No.1. The defendant No.1 through his advocate given reply as per Ex.P.18 on 06.12.2021. By denying the notice averments and made averments as pleaded in the written statement.

109. Ex.P.19 is requisition given by plaintiffs to the Tahsildar Ranebennur, on 15.12.2021 to change the mutation extract. Ex.P.20 given requisition to Deputy Commissioner Haveri for change the mutation, as defendant No.1 herein illegally and fraudulently got transferred the property in his favour without having any manner of rights and title. Ex.P.21 and Ex.P.22 documents are given to Tahsildar Ranebennur and sub registrar Ranebennur, for not to alienate or crating any charge, as per the interim order passed by this court on IA No.1, in this case.

110. On the other hand, the defendants have produced Ex.D.6 mutation extract No.329 got effected on 05.06.1984. Ex.D.23 and D.24 regarding varadi given and notice issued on 15.06.1988. During the cross examination of PW.1 elicited that, the name of the defendants No.1 and 2 stands in the suit schedule property from the year 1984 and which is continued. Further it admitted that, mutation dairy No.329 was not challenged by his mother or themselves, as they do not knew about the said document. Even after the death of their father, they did not go to the Tahsildar office to get



mutate their names by way of inheritance, as they do not know about the said property.

111. Further he elicited that, the Ex.P.10 got effected in the name of defendant No.1 in the year 1984-85. He elicited that, the suit was filed after 38 years, after the defendant No.1 and 2's name appeared in the records. It elicited by him that, they went to outside for avocation and after came to the village, the elder persons by name Jabappa Lamani and Anjappa Lamani 2 years back suggested them, regarding the existence of property. Both were died one or two year back.

112. During the cross-examination of DW.1, it was suggested that, the defendants No.1 and 2 by colluding with each got created the Ex.D.6 document. That the fact of mutation was got effected, came to the knowledge of plaintiffs in the year 2021. The said suggestion was denied by him.

113. So, considering the evidence of both the parties, one thing is suffice before the court that, the mutation extract No.329 got effect in the year 1984 and same was admitted by PW.1 during his cross-examination. But, the plaintiffs have contended that, the knowledge about the mutation came to know by them, in the year 2021, when the elderly persons narrated about the said fact. But, the defendants have denied the knowledge to plaintiffs about the execution of the mutation in the year 2021.

114. It is worth to note here that, the plaintiffs filed this suit for the relief of declaration of title, recovery of



possession, permanent injunction and for compensation for damages.

115. Since, for the relief of declaration of title, the plaintiffs ought to have filed the suit from the date of 'right to sue first accrues' i.e., as per article 58 of Limitation Act, to obtain any other declaration period of limitation is 3 years and the time from which, the period begins to run, when they 'right to sue first accrues.'

116. As per the admission given by PW.1 from the date of effecting the mutation in the name of defendants No.1 and 2 after 38 years, they filed the present. But, PW.1 elicited before the court that, the property stands in the name of defendant No.1, the said fact does not know from how many years stands the property in the name of defendant No.1, but, the said fact came to know him in the year 2021. So, as per the admission and evidence of PW.1, which discloses that, the fact of knowledge about the property stands in the name of defendant No..1 came to the plaintiffs in the year 2021.

117. Further, as per Ex.P.15 the legal notice issued on 25.11.2021, for demanding to vacate the possession of the suit schedule property. So, the right to sue first accrues, when the defendants issued the reply notice given, as per Ex.P.18 on 06.12.2021. Even for the sake of the arguments, it is holds that, the suit for the relief of declaration is barred by law of limitation, but, the plaintiffs have sought the relief of recovery of the possession, on the basis of the title.



Therefore, even for one relief suit is not barred by limitation, then, on the relief of others suit cannot be dismissed.

118. So far as, in respect of limitation for the recovery of the possession, on the basis of title is concerned.

116. Article 65 of Limitation Act, reads as follows:

“65. For possession of immovable property or any interest therein based on title. The period of limitation is twelve years, When the possession of the defendant becomes adverse to the plaintiff

Explanation.—For the purposes of this article.

(a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession ;

(b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;

(c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession”.



119. Sec.6 of Specific Relief Act, 1963 reads as follows:

“6. Suit by person dispossessed of immovable property- (1) *If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person [through whom he has been in possession or any person] claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.*

(2) No suit under this section shall be brought;
(a) after the expiry of six months from the date of dispossession; or
(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suit to establish his title to such property and to recover possession thereof.”

120. On combined reading of above provisions, it is clear that, as per Sec.6 (4) of Specific Relief Act, 1963, there is no bar to any person from suing to establish his title to such property and to recover possession thereof. Further, as per Article 65 of Limitation Act, when the possession of the defendant becomes adverse to the plaintiff, period of limitation is 12 years based on the title. Therefore, there is no any bar to a person to recover the possession on the basis of his title and when the possession of the defendant becomes adverse, from that time, the period of limitation begins and limitation is 12 years.



121. Sec.27 of Limitation Act, reads as follows:

***“27. Extinguishable of right to property:-
At the determination of the period hereby
limited to any person for instituting a suit for
possession of any property, his right to such
property shall be extinguished.”***

122. As per the above said provision, if a person is in possession adverse to the title owner, for a prescribed period and the title owner not question his possession by taking any recourse, thereafter, his right over the said property has been extinguished.

123. So, on combined reading of Sec.27, Article 65 of the Limitation Act and Sec.6 of the Specific Relief Act, it is crystal clear that, there no any bar to establish his title on immovable property and claim for recovery of possession. Article 65 speaks about the adverse possession of other side, when it becomes known to the plaintiff, regarding adverse possession of the defendant. Then from the date of adverse possession of the plaintiff's title within 12 years, plaintiff can file suit and recover the possession. If the plaintiffs keep hostile and abandoned their possessory rights, despite knowing that some other person is claiming hostile possession over their land, but, he chooses to keep quiet and not taking any action against the said person, then, Sec.27 of the Limitation Act attracts, thereafter their right over the said property has been extinguished.

124. Coming to the case on hand, in this case, the defendants have not sought, for the relief of adverse possession against the plaintiffs, over the suit schedule property. The title of the plaintiffs denies by the defendants in their written



statement. But, as hold by this court, while answering the issue No.1 the suit schedule property is self acquired property of late Ramappa Lamani. Hence, the plaintiffs are absolute owners of the said property. Further, on the basis of mutation extract the title cannot be declared even, the property stands in the name of defendants, over the revenue records for more than 3 decades.

125. As per Article 65 of the Limitation Act, the limitation begins to run, when the possession of the defendants becomes adverse to the plaintiffs. From the date of adverse possession the period of limitation is 12 years. In this case, the plaintiffs have issued legal notice, as per Ex.P.15 for recovery of possession and directed to vacate the possession. But, the defendant No.1, through his advocate issued reply legal notice by denying the title and possession of the plaintiffs and the nature of the notice becomes adverse to the possession of immovable property of the plaintiffs, from the date of service of the reply notice given by the defendants. Since, reply notice issued on 06.12.2021 and same was served upon the advocate of the plaintiffs. Therefore, from the date of the service of the reply notice, the possession of the suit schedule property becomes adverse to the plaintiffs.

126. Therefore, as per Article 65 of Limitation Act, the limitation begins to run from the date of service of reply notice to the counsel for plaintiffs and not from the defendant No.1 and 2 came into the possession of the suit schedule property. Therefore, for the recovery of the possession, on the basis of the title the relief is not barred by time.



127. In this regard I have drawn the attention of decision of the Hon'ble Apex Court of India passed in the case of **Indira Vs Arumugam and another reported in (1998) 1 SCC 614**, wherein the Hon'ble court held at para 5 as follows;

5. "It is, therefore, obvious that when the suit is based on title for possession, once the title is established on the basis of relevant documents and other evidence unless the defendant proves adverse possession for the prescriptive period, the plaintiff cannot be non-suited".

128. In an another case, decided by Hon'ble Apex Court of India, in the case of **Thajudeen v. T.N. Khadi & Village Industries Board, reported in (2024) 19 SCC 121**, wherein at para No.27 and 28 held as follows;

27. In C. Mohammad Yunus v. Unnissa [C. Mohammad Yunus v. Unnissa, 1961 SCC OnLine SC 135 : AIR 1961 SC 808] it has been laid down that in a suit for declaration with a further relief, the limitation would be governed by the article governing the suit for such further relief. In fact, a suit for a declaration of title to immovable property would not be barred so long as the right to such a property continues and subsists. When such right continues to subsist, the relief for declaration would be a continuing right and there would be no limitation for such a suit. The principle is that the suit for a



declaration for a right cannot be held to be barred so long as Right to Property subsist.

28. Even otherwise, though the limitation for filing a suit for declaration of title is three years as per Article 58 of the Schedule to the Limitation Act but for recovery of possession based upon title, the limitation is 12 years from the date the possession of the defendant becomes adverse in terms of Article 65 of the Schedule to the Limitation Act. Therefore, suit for the relief of possession was not actually barred and as such the court of first instance could not have dismissed the entire suit as barred by time.

..... Underlined by me.

129. In an another case, C. Mohammad Yunus v. Unnissa [C. Mohammad Yunus v. Unnissa, reported in 1961 SCC OnLine SC 135 : AIR 1961 SC 808]

It has been laid down that in a suit for declaration with a further relief, the limitation would be governed by the article governing the suit for such further relief. In fact, a suit for a declaration of title to immovable property would not be barred so long as the right to such a property continues and subsists. When such right continues to subsist, the relief for declaration would be a continuing right and there would be no limitation for such a suit. The principle is that the suit for a declaration for a right cannot be held to be barred so long as Right to Property subsist.



130. Even otherwise, though the limitation for filing a suit for declaration of title is three years, as per Article 58 of the Schedule to the Limitation Act, but, for recovery of possession based upon title, the limitation is 12 years, from the date of the possession of the defendant becomes adverse, in terms of Article 65 of the Schedule to the Limitation Act. Therefore, suit for the relief of possession was not actually barred and as such, the court of first instance could not have dismissed the entire suit as barred by time.

131. The Hon'ble Apex Court of India by relying the above judgments, recently in the case of **Karam Singh Vs Amrijit Singh and others, arising out of SLP. (c) Nos.3560-3561/2023 (Civil Appeal No.....of 2025) decided on 15.10.2025** at para 17 of its judgment held as follows;

17. Apart from above, the suit was not for a mere declaration of the will being null and void but for possession as well. The plaintiff claimed title over the suit land by natural succession and sought possession based on title. Where a suit is for possession of immovable property or any interest therein, based on title, the limitation period is 12 years when the possession of the defendants becomes adverse to the plaintiff (vide Article 65 of the Schedule to the Limitation Act).

132. Thus, on conjoint of reading of these judgments, which are clearly extract before the court that, though the limitation for filing a suit for declaration of title is three years,



as per Article 58 of the Limitation Act, But, for recovery of possession, based upon title the limitation is 12 years, from the date of possession of the defendant becomes adverse, in terms of article 65 of the limitation Act. Therefore, in the case on hand, the adverse possession of suit schedule property over the plaintiffs, arises only after, service of reply notice given by the defendants to the plaintiffs. Hence, which was given on 06.12.2021 and suit was filed on 17.08.2022. Therefore, suit for the relief of possession was not actually barred by time. Under such circumstances, as per the opinion of this court the argument argued by the learned counsel for defendants cannot be accepted. Hence, the suit of the plaintiffs is not barred by law of limitation. **Accordingly, I answer the issue No.5 In the Negative.**

133. ISSUE No.3 AND 4 : These issues are related to each other, hence, these issues are taken together for common discussion to avoid the repetition of facts and circumstances.

The defendants in their written statement have taken specific defence that, the plaintiffs have not impleaded the children of Sheshappa in the suit and they are necessary parties to the present suit. Hence, the suit is bad for non joinder of necessary parties. Further, it is contended that, the Sy No.80 measuring 5 acre of Gangapur village property is not included in the present suit schedule property and also not included other joint family properties. Hence, the suit of the plaintiffs is bad for non joinder of necessary parties.

134. It is worth to note here that, the plaintiffs filed this suit for the relief of declaration of title, recovery of possession



by claiming damages of illegal possession of property and also sought for permanent injunction. The property shown in the suit schedule property, as per record of rights, which are stands in the name of either in the defendant No.1 or in the name of defendant No.2. There is no any relief against the children of Sheshappa. Therefore, the children of Sheshappa are no way concerned to the suit schedule property. Therefore, their presence to decide the present case, is not necessary. Even in their absence, the suit for declaration claimed against the defendants No.1 to 6 is maintainable.

135. It is relevant to note here that, as per Sec.34 of Specific Relief of Act, 1963, which describe that, a suit for declaration can be filed for the relief to any right, as to any property against the person, who denies the title. In this case, the title of the plaintiffs denied by the defendants and not denied by the children of Sheshappa. Therefore, impleading the children of Sheshappa does not arise. In there absence, settle all the issues and suit can be effectively decided by this court. Hence, they are necessary parties to the present suit. Accordingly, suit is not bad for non joinder of necessary parties.

136. So far as, in respect of non inclusion of properties are concerned. No doubt the relief sought by the plaintiffs for the relief of declaration and not for the relief of partition. The plaintiffs filed this suit by claiming declaration of title and recovery of possession, on the basis of title. Therefore, inclusion of other properties, the question does not arise. Moreover, Sy No.80 measuring 5 acre of Gangapur village granted the occupancy right in favour of Sheshappa and the RTC extract, as



per Ex.D.4 stands in the name of children of Sheshappa. On the other hand, the defendants in the suit have failed to prove that, late Ramappa Lamani sold the said property in favour of Sheshappa.

137. Further, the other joint family properties not necessary to include in the present suit. As the suit is filed for the the relief of declaration based on the title. Therefore, the defendants are failed to establish before the court that, the other properties are necessary to include in the suit, to decide the same. Accordingly, the suit of the plaintiffs is neither bad for non joinder of necessary parties or non inclusion of all the joint family properties. **Hence, I answer issue No.3 and 4 in the Negative.**

138. ISSUE No.6 : In this case, the plaintiffs have proved and established before the court that, late Ramappa Lamani filed Form No.7, before the Land Tribunal Ranebennur to grant occupancy right, on behalf of his family. Accordingly, the Land Tribunal Ranebennur, granted occupancy right on behalf of family of Ramappa Lamani, as per Sec.2(11) of Karnataka Land Reforms Act. Hence, the plaintiffs and late. defendant No.7 are entitle to declare that, they are absolute owners of the suit schedule property.

139. It is proved before the court that, the defendants No.1 and 2 are in possession and enjoying the suit schedule property from the date of effecting the mutation. Further, their possession discloses on perusal of other documents, which shows that, they obtained loan for minor irrigation from the



Union Bank of India. Even, the plaintiffs have admitted the possession of the defendant No. 1 and 2 over the suit schedule property.

140. Now the plaintiffs claiming for recovery of the possession from the defendant No.1, to vacate the suit schedule property and hand over the same to the plaintiffs. Since, the plaintiffs successfully proved before the court that, they are the absolute owner and possessor of the suit schedule property. Accordingly, on the basis of the title, they are entitle to get relief of recovery of possession from the defendants. It is worth to note here that, from the date of service of legal notice issued by the plaintiffs, the possession over the suit schedule property of the defendants, becomes adverse to the plaintiffs title. Therefore, the plaintiffs are entitle to get recover the said possession from the defendants.

141. In the suit, the plaintiffs have not specifically claimed for mesne profit, but, they have claimed the relief in (c) that, “pass a decree directing the defendant No.1 to 6 to pay towards damages to the plaintiffs, for having illegal possession/ occupied of the suit schedule property, as court deems fit”.

142. So, the plaintiffs have not claim mense profit, but, they have claimed damages of Rs.90,000/- per year with interest. Since, earlier to the issuing of legal notice the possession of the defendants over the suit schedule property not becomes adverse to the plaintiffs. But, the possession of the defendants, which is wrongful possession over the suit schedule property.



143. Since, the plaintiffs have not claimed relief of mesne profit against the defendants. Hence, in view of the judgment passed by the **Hon'ble Supreme Court of India in the case of Mohd. Amin and others Vs Vakil Ahmad and others reported in (1952) 2 SCC 168**, wherein the Hon'ble Court held that, without specifically claiming mesne profit, it cannot be granted by the court.

144. In the written statement of the defendants pleaded that, the defendants after obtaining the loan from the Banks dig the bore well and also developed the agricultural land, which was depending on the rain, now which is fertile land and made developed by the defendants. On perusal of the mutation extracts marked as Ex.D.18 to D.20 discloses that, the defendant No.2 obtained loan from Union Bank for minor irrigation and made developed in the suit schedule property. Therefore, through the said documents it probabalize that, the defendants have made developments, in the suit schedule property. But, they have enjoyed the said property, without sharing the benefit from the suit schedule property to the plaintiffs. However, without claiming the relief by the defendants in the their Written statement, as counter claim, and without paying any court fee, such relief can not be granted.

145. Though, the plaintiffs have claimed damages from the defendants, but, they have not paid court fee on the said relief. Therefore, the plaintiffs are not entitle to get the relief of damages, as sought in the relief.



146. Since, the plaintiffs have proved their title on the basis of the occupancy right granted by the Land Tribunal Ranebennur, therefore, the plaintiffs are entitle to get relief of declaration of title, recovery of possession by vacating the defendants with, due process of law. Therefore, the plaintiffs are entitle for the relief as claimed in the suit. Further, the plaintiffs are entitle to recovery the possession of the suit schedule property from the defendants by ejecting them, from the suit schedule property. **Accordingly I answer issue No.6 in the Affirmative.**

147. ISSUE No.7:- In view of my findings to above issues, I pass the following:-

ORDER

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

The plaintiffs are hereby declared, as absolute owners of the suit schedule property bearing Sy No.82 (old Sy No.3) measuring 5 acre situated at Gangapur village, Medleri Hobali of Ranebennur taluka.

The defendant No.1 to 6 are hereby directed to vacate the possession of the suit schedule property and deliver the possession of the said property, in favour of plaintiffs, within two months, from the date of this order. If the



defendants Nos.1 to 6 are not vacate the possession of the suit schedule property, then, liberty is given to the plaintiffs to eject the defendant No.1 from the possession of the suit schedule property, by due course of law.

The defendant No.1 is hereby permanently restrain him, his agents, power of attorney holders or any one acting on his behalf from alienating , leasing , creating any type of charge, lien etc., or acting against to the interest of the plaintiffs, over the suit schedule property.

The suit of the plaintiffs is hereby dismissed, in respect of relief sought for damages to the plaintiffs, for the illegal possession/occupied of the suit schedule property, from the defendants.

Draw decree accordingly.

(Dictated to the stenographer, typed and transcribed her and corrected by me then pronounced in the open Court, this the 12th day of June 2026)

(Mahantesh G. Bhusagol)
III Addl. Sr. Civil Judge &
JMFC, Ranebennur.

ANNEXURE

List of witnesses examined for plaintiff

PW1 : Mahadevappa Late Ramappa Lamani,
PW.2: Smt Halavva W/o Late Takreppa Lamani

**List of witnesses examined for defendants**

DW1: Sakreppa Late Venkappa Lamani,

DW2: Kallappa Tulajappa Lamani.

List of documents marked for the Plaintiffs

Ex.P1 & 2 : Form No.7,

Ex.P3 : Order of Land Tribunal passed in LRF(A)SR-
144740/1976,

Ex.P4 : Case proceeding document,

Ex.P5 : Statement of Sayyad Ameerjan,

Ex.P6 : Form No.10,

Ex.P7 : Mutation extract No.318,

Ex.P8 : Genealogy tree,

Ex.P9 : Death Certificate,

Ex.P10 : Certified copy of RTC extract,

Ex.P11 : Certified copy of mutation extract No.329,

Ex.P12 : Mutation extract No.495,

Ex.P13 : Mutation extract No.1016,

Ex.P14 : RTC extract bearing Sy No.82,

Ex.P15 : Legal notice,

Ex.P16 : Postal receipt,

Ex.P17 : Postal acknowledgment,

Ex.P18 : Reply notice,

Ex.P19 & 20: Requisitions dated 15.12.2021,

Ex.P21 & 22: Documents given to Tahsildar Ranebennur
and sub registrar Ranebennur,

Ex.P23 : Receipt for payment of Assessment,

Ex.P24 : Order of Land Tribunal,

Ex.P25 : Form No.7,

Ex.P26 : Mutation extract No.224,

Ex.P27 : RTC extract bearing Sy No.80/1.

**List of documents marked for defendants**

- Ex.D.1 : RTC extract,
- Ex.D.2 : RTC extract,
- Ex.D.3 : RTC extract,
- Ex.D.4 : RTC extract bearing Sy No.80/1,
- Ex.D.5 : Certified copy of ME No.318,
- Ex.D.6 : Certified copy of ME No.329,
- Ex.D.7 : ME No.1016,
- Ex.D.8 : Form No.10,
- Ex.D.9 : Takta document,
- Ex.D.10 : A P T Sheet,
- Ex.D.11 : Khata extract,
- Ex.D.12 : Letter dated 06.12.2021,
- Ex.D.13 : Letter dated 06.12.2021,
- Ex.D.14 : Letter dated 06.12.2021,
- Ex.D.15 : Legal notice,
- Ex.D.16 : Reply notice,
- Ex.D.17 : Mutation extract No.495,
- Ex.D.18 : Mutation extract No.613,
- Ex.D.19 : MR No.705,
- Ex.D.20 : Mutation extract No.712,
- Ex.D.21 : RTC extract bearing Sy No.103/3,
- Ex.D.22 : RTC extract bearing Sy No.82,
- Ex.D.23 : Original varadi,
- Ex.D.24 : Notice.

(Mahantesh G. Bhusagol)
III Addl. Sr. Civil Judge &
JMFC, Ranebennur.