



IN THE COURT OF SENIOR CIVIL JUDGE & JMFC.,

AT: ALAND

Present: Shri. **Abdul Rahaman Pathan,**
B.A. LL.M.,
II Additional Senior Civil Judge & JMFC.,
Kalaburagi

**& C/C Senior Civil Judge & JMFC.,
ALAND**

R.A. No. 5/2024

Dated this 17th day of March 2026

**APPELLANT/
PLAINTIFF:**

Baburao S/o Vithal Nadageri
Age: 45 years, Occ: Swachagar
in Gram Panchayat, R/o Kodal
Hangarga, Tq: Aland, Dist:
Kalaburagi.

(By Shri. S.A.P. Adv.,)

//Versus//

**RESPONDENTS/
DEFENDANTS:**

1. Shantamallappa S/o Sharanappa
Nagade, Age: 65 years,
Since deceased represented
through is Lr's.
- 1(a).Sugalabai W/o Shantmallappa
Nagade @ Police Patil, Age: 60
years, Occ: Household,
- 1(b).Channu S/o Shantmallappa
Nagade @ Police Patil, Age: 30
years, Occ: Agriculture,
3. Sidram S/o Dharmanna Nadgeri,
Age: 55 years, Occ: Coolie,
All are R/o Kodal Hangarga, Tq:
Aland.

**(R1(a) & (b) R2 by Shri. R.Y.D.
Adv.)**

(R3 Ex-Parte)

Date and nature of Decree appealed against	Judgment and decree passed in O.S. No. 144/2017 dated, 17.01.2024 on the file of Hon'ble Additional Civil Judge & J.M.F.C, Aland.		
Date of institution of the Appeal	26.02.2024		
Date on which judgment is pronounced	17.03.2026		
Total Duration	Year/s 02	Months 00	Day/s 19

J U D G M E N T

This is an appeal filed by appellant/plaintiff against judgment and decree in O.S. No. 144/2017 dated, 17.01.2024 by Hon'ble Additional Civil Judge and JMFC., Aland dismissing the suit filed for a relief of declaration of title and perpetual injunction.

2. The appellant was plaintiff and respondents were defendants before learned trial Court. For the sake of convenience, the parties to appeal are referred to in the same ranking as before the trial Court.

3. The facts of the case of plaintiffs as set out in the plaint are as under:

It is the case of plaintiffs that, originally House Property bearing Panchayath No. 3-84/2 measuring 14 X 20 square feet, Situated at Hangaraga Village (**Hereinafter referred as Suit Schedule Property**) belonged to father of plaintiffs. After his demise, Khata of the same has been mutated of plaintiff as such, he has been in possession and enjoyment of the same. Initially Suit Schedule Property was comprising structure but same was demolished in communal clashes as such, same is now a vacant plot. The plaintiffs have been residing in separate property and using the Suit Schedule Property as dumping ground. Defendant No. 1 is son

of defendant No. 2 and defendant No. 3 intends to purchase the Suit Schedule Property from defendant No. 1 and 2. Defendant No. 1 claims that, he is owner of land bearing Sy. No. 195/P-2 measuring 09 guntas. The said land is an imaginary one and is not situated within vicinity of Suit Schedule Property. This being the case, defendant No. 1 and 3 tried to cause obstruction to the possession of plaintiff over suit property as such, plaintiff got issued legal notice dated, 12.06.2017 calling upon defendant No. 1 and 3 to desist from their nefarious activities but in the said notice, the measurement of suit property is wrongly mentioned as 40 X 14 square feet instead of 14 X 20 square feet. The defendants replied to said notice on untenable grounds and also tried to cause obstruction to the possession of plaintiff over Suit Schedule Property. The plaintiff restrained them with great efforts. Thus, he constrained to file instant suit for a relief of declaration to declare that, he is absolute owner in possession of the Suit Schedule Property and also for perpetual injunction to restrain defendants from causing obstruction to his possession over Suit Schedule Property.

4. It appears from Order Sheet (trial Court) dated, 30.11.2017 that, despite service of suit summons, defendant No. 3 did not appear as such, has been placed ex-parte. Defendant No. 1 is reported to be dead and his legal heirs have been brought on record. It appears from Order Sheet (trial Court) dated, 22.01.2019 that, despite sufficient time, defendant No. 1(a) did not file Written Statement as such, Written Statement on his behalf is taken as not filed. Defendant No. 2 filed Written Statement contending that, instant suit is not maintainable either in law or on facts as such, liable to be dismissed at the threshold. It is denied that, Suit Schedule Property was house property and same was demolished in

communal clash as such, same is now a vacant plot. It is also denied that, plaintiff is the absolute owner in possession of the Suit Schedule Property and has been using the same as dumping yard. It is also denied that, defendant No. 2 has no property within vicinity of the suit property. It is flatly denied that, defendant No. 1 to 3 highhandedly tried to cause obstruction to the possession of plaintiff over suit property as such, plaintiff got issued legal notice calling upon them to desist from nefarious activities. It is admitted that, defendants replied to notice of plaintiff claiming title over land bearing Sy. No. 195/2 measuring 09 guntas.

5. It is specifically contended that, defendants are the absolute owners in possession of the land bearing Sy. No. 195/2 measuring 09 guntas, Situated at Hangaraga Village. The said land has not been converted for non agricultural usage as such, no plots are laid therein. The boundaries of the suit property claimed in plaint are false and do not suit to existing situation. The plaintiff is a Gram Panchayath employee and taking undue advantage of his position created documents in his favor with respect to suit property. The Suit Schedule Property is situated abutting to State Highway No. 9. The plaintiff though is no way related thereto filed instant suit only with an intention to gulp the same. There is no cause of action and cause of action shown in plaint is imaginary one. Thus, prayed to dismiss this suit with costs.

6. On the basis of pleadings and documents produced at initial stage, learned trial Court framed following:

ISSUES

- 1. Whether the plaintiff proves that, suit property is the ancestral property of the plaintiff herein and he inherited the same?.**
 - 2. Whether the defendants prove that defendants are the owner of the suit property and inherited the same from their ancestors?.**
 - 3. Whether plaintiff proves that the defendants are trying to interfere with the suit property?.**
 - 4. Whether the plaintiff proves that he is entitled to the relief of declaration as owner in possession of the suit property?.**
 - 5. Whether the plaintiff is entitled to the relief of permanent injunction against the defendants?.**
 - 6. What Order or Decree?.**
7. During trial, plaintiff examined himself as PW-1 and two witnesses as PW-2 and 3. In support of oral evidence got marked Ex.P1 and Ex.P2/DCB Register Extracts, Ex.P3/Legal Notice dated. 12.06.2017, Ex.P4 and 5/Postal Acknowledgments, Ex.P6/Reply Notice dated. 15.06.2017, Ex.P7 to 9/Tax Paid Receipts and Ex.P10/Map. Per contra, defendant No. 2 examined himself as DW-1 and one witness as DW-2. In support of oral evidence got marked Ex.D1 to 5/RTC Extracts and Ex.D6/Endorsement dated. 30.12.2018.
8. After appreciating oral and documentary evidence placed on record, learned trial judge dismissed the suit.
9. Being aggrieved by judgment and decree of learned trial Court, appellant/plaintiff filed instant appeal on the grounds that, the impugned judgment and decree are detriment to oral and documentary evidence placed on record. The trial Court has failed to consider oral evidence and Khata Extract of the suit property produced and erroneously non suited plaintiff. The trial Court has failed to consider that, plaintiff has sought for appointment of

Court Commissioner to ascertain existence and situation of property claimed by defendant. The trial Court failed to consider that, DW-1 though claimed that, his property has been surveyed but has not produced report relating thereto. The trial Court has failed to appreciate the claim of plaintiff that, house of plaintiff was burnt in a communal clash along with title documents relating thereto. The trial Court failed to consider the possession of plaintiff and erroneously dismissed the suit. The impugned judgment and decree are based on surmises and conjectures as such, cannot be sustained. Thus, prayed to set aside impugned judgment and decree by allowing instant appeal.

10. It appears from Order Sheet dated. 23.04.2024 that, despite service of cause notice, respondent No. 3 did not appear as such, has been placed ex-parte. Respondent No. 1(a) and 2 appeared through their respective counsels.

11. Along with appeal memo, appellant filed IA No. I U/Order XXVI Rule 9 Code of Civil Procedure but said application was rejected by my learned predecessor in Office vide Order dated. 01.03.2025.

12. The entire records of O.S. No. 144/2017 are secured from learned trial Court.

13. On consideration of material available on record and reasoning given by learned trial Court in impugned judgment and grounds urged in memorandum appeal, following points arise for my consideration:

- 1. Whether learned trial Court has committed error in concluding that, plaintiff has failed to prove his title and possession over Suit Schedule Property as on date of suit?.**

- 2. Whether learned trial Court committed glaring error in concluding that, the suit property is part and parcel of Sy. No. 195/2 measuring 09 guntas, Situated at Kodahangaraga Village, Aland taluka?.**
- 3. Whether learned trial Court has committed error in concluding that, plaintiff failed to prove interference by defendants to his possession over Suit Schedule Property?.**
- 4. Whether plaintiff is entitle for the reliefs claimed?.**
- 5. Whether the impugned judgment and decree are opposed to law, facts and material on record as such, require interference at the hands of this Court?.**
- 6. What Order or Decree?.**

14. Heard learned counsel for appellant and respondent No. 1(a) and 2. Perused the material available on record along with Written Arguments filed by learned counsel for respondent No. 1(a) and 2. My finding on above points is under:

Point No. 1: In the Negative

Point No. 2: In the Negative

Point No. 3: In the Negative

Point No. 4: In the Negative

Point No. 5: In the Negative

Point No. 6: As per final order for the following:

:REASONS:

15. **Point No. 1 to 5:** These points are interrelated as such, have been taken for common discussion to avoid the repetition of discussion. It is well settled law that, first appeal is a continuation of original proceeding. Ordinarily, the first appellate Court vested with power to rehear question of law as well as fact invoked by both parties. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial Court are open for reconsideration. Therefore, the first appellate Court is required to address all issues and decide the case by adequate

reasons based on the oral and documentary evidence placed on record. In view of above, this Court embarks upon to re-appreciate the entire oral and documentary evidence placed on record.

16. In view of above, this Court carefully perused oral and documentary evidence placed on record. The plaintiff has claimed impeccable title and possession over Suit Schedule Property as such, he is incumbent upon to substantiate the same. So as to prove his case, plaintiff examined himself as PW-1 and filed affidavit in lieu of examination in chief reiterating petition averments. In cross examination, he admitted that, originally suit property belonged to his ancestors and thereafter has been mutated in favor of his father and thereafter has been mutated in his name. Despite claiming so, has not produced even revenue records pertaining to suit property to show that, same belonged to his ancestors. It is also admitted that, he has mentioned extent of the suit property as 14 x 20 square feet in the plaint averments based on the map but did not produce said map. Furthermore, PW-1 though claimed that, his house was set at ablaze in communal clash and thereafter Government extended financial assistance to construct the house but has not produced any material relating thereto. The evidence of PW-1 shows that, his claim of title over suit property completely based Ex.P1 and 2, which are revenue records as such, does not assume much significance.

17. This Court also perused evidence of PW-2 deposed that, the Suit Schedule Property measures 14 x 20 square feet and belonged to ancestors of plaintiff. The same is now in possession of plaintiff. The defendants have no kind of right therein. In cross examination, he admitted that, the father of plaintiff owned a house situated at Dharmaraj Math. He along with his family was residing therein. He does not know number of the said house and all his four children

have share therein. The said house is in existence as on date. PW-2 nowhere in his evidence deposed that, plaintiff is owner of vacant plot as claimed in the plaint. Per contra, he categorically asserted that, plaintiff along with his brother and sisters inherited a house property which is not suit property. Apart from this, there is nothing in his evidence to show that, plaintiff is in possession of Suit Schedule property i.e vacant plot as claimed in the plaint. In such eventuality, evidence of PW-2 about title and possession of plaintiff over suit property does not appear to be probable.

18. This Court further perused evidence of PW-3, who also deposed that, plaintiff is the owner in possession of an area of 14 X 20 square feet. The said property earlier belonged to father of plaintiff and now is in possession of plaintiff. The defendants have no right therein. In cross examination he admitted that, the measurement of suit property is East-West: 11 Square feet and North-South : 20 Square feet. The boundary deposed to by him are altogether different as claimed in plaint. The description of the property mentioned by PW-3 does not resemble to the description of the suit property as claimed in the plaint. Thus, evidence of PW-3 is also not in consonance with the evidence of PW-1 as such, does not inspire confidence of this Court.

19. Furthermore, this Court perused evidence of DW-2/defendant No. 2 deposed in line with contentions raised in the Written Statement. In cross examination it is suggested that, during 1991 the house belonging to father of the plaintiff was burnt in communal clash and Government got him constructed another house. It is also suggested that, the father of the plaintiff using suit property as dumping yard but witness denied the same. Virtually there is nothing in the cross examination to show that, plaintiff is the owner of suit property and said property is not part and parcel

of the property claimed by defendant.

20. This Court also perused evidence of DW-2 deposed in line with evidence of DW-1. In cross examination it is suggested that, the suit property is not part and parcel of land bearing Sy. No. 195/2 but witness denied the same. It is worthwhile to note that, it appears from material on record that, appellant had filed IA No. I U/Order XXVI rule 9 of the Code of Civil Procedure to appoint Court Commissioner to measure and ascertain the situation of suit property but said application came to be rejected vide Order dated. 01.03.2025 by my learned predecessor in Office and said Order has not been challenged by appellant. Apart from this, there is nothing in the evidence of DW-2 to show title and possession of plaintiff over suit property as on date of suit. Per contra, DW-2 categorically asserted title and possession of plaintiff over land bearing Sy. No. 195/2.

21. This Court carefully perused Ex.P1 and 2/DCB Register Extracts. Wherein it appears that, the Khata of the property bearing 3-84/2 stands in the name of plaintiff. The plaintiff claims that, said property was granted by Gram Panchayath in favor of his ancestors. Despite that, has not produced any material to show any such grant. Admittedly, plaintiff is revenue official and working in Gram Panchayath of Kudalhagaraga Village. In absence of documents to show grant of suit property in favor of ancestors of the plaintiff, the claim of defendant that, Ex.P1 and 2 are sham and doctored documents appears to be probable. This Court further perused Ex.P10/Map issued by Secretary Gram Panchayat. The same belongs to House No. 3-84/2. It is worthwhile to note that, Ex.P10 does not show the date on which it has been prepared and belongs to a house property but property claimed by plaintiff is a vacant site. In such eventuality, Ex.P10 does not come to the aid of

plaintiff. Apart from this, Ex.P10 neither a title document nor shows grant of suit property in favor ancestors of the plaintiff. In such eventuality, Ex.P10 does not assume any significance. Furthermore, plaintiff has not produced any material to show that, the Khata as per Ex.P1 and 2 has been mutated following all procedure prescribed by law. In such eventuality, said entries cannot be presumed as proof of possession of plaintiff over suit property.

22. This Court carefully perused Ex.D1 to 3/RTC Extracts. Wherein it appears that, land bearing No. 190/2 belonged to father of defendant viz, Sharanappa. This Court also perused Ex.D4 and 5. Wherein it appears that, after demise of his father, Khata of the said land has been mutated in favor of defendant and his family members. Admittedly, Ex.D1 to 5 are revenue records as such, carries presumption that, same are correct unless rebutted by cogent evidence and there is no material on record to dislodge said presumption. This Court further perused Ex.D6/Endorsement dated 30.12.2018 issued by Gram Panchayath, Kudalhangarga Village. Wherein it appears that, there are no records belonging to property No. 3-84/2 i.e. suit property. Admittedly, plaintiff is a revenue official and works in the Office of Gram Panchayath which issued Ex.D6. If suit property was granted to his ancestors, definitely he would have produced documents relating to said grant. In absence of any such material claim of plaintiff over suit property based on Ex.P1 and 2 does not stand to the legal scrutiny. The plaintiff though claimed that, he being absolute owner has been in possession and enjoyment of the suit property as on date of suit but has failed to substantiate the same as such, his claim of interference by defendant to his possession over suit property does not appear to be probable. Per contra, defendant with cogent evidence has proved his title and possession over land bearing

Sy. No. 195/2 Kudalhangarga Village as such, his claim that, the property claimed by plaintiff is part and parcel of his property appears to be probable. Thus, plaintiff is not entitle for the reliefs claimed in this suit. The trial Court though with some other reasons but has rightly non suited the plaintiff. Thus, the impugned judgment and decree do not warrant interference at the hands of this Court. Considering facts of this case, it would not be just and reasonable to impose cost on any of the parties to this suit.

Accordingly, I answer Point No. 1 to 5 in the Negative.

23. Point No. 6: In view of discussion and conclusion arrived at Point No. 1 to 5, this Court proceeds to pass following:

ORDER

The appeal filed by appellant/plaintiff U/Section 96 R/w Order XLI of the Code of Civil Procedure is hereby DISMISSED.

The judgment and decree dated, 17.01.2024 passed by Hon'ble Additional Civil Judge and JMFC., Aland in O.S. No. 144/2017 is hereby CONFIRMED.

Parties to bear their own costs.

Draw decree accordingly.

The office shall return TCR to the learned trial Court along with copy of this judgment and decree drawn in this appeal forthwith.

(Dictated to the Stenographer directly on laptop, corrected and then pronounced by me in the Open Court on this the 17th day of March 2026).

(Abdul Rahaman Pathan)
II Additional Senior Civil Judge
& JMFC., Kalaburagi &
C/C Senior Civil Judge & JMFC,
ALAND