



**IN THE COURT OF THE SENIOR CIVIL JUDGE &
JMFC, CHINCHOLI**

:-PRESENT:-

**Anil Shekhanavar, B.Com., LL.B. (Spl)
SENIOR CIVIL JUDGE & J.M.F.C
CHINCHOLI.**

DATED THIS 10th DAY OF AUGUST 2026

REGULAR APPEAL NO.10/2025

BETWEEN :

1) Premsingh S/o Govind,
Age : 61 Years, Occ : Agriculture,
R/o H.No.193-1 Koravi Tanda,
Taluka Chincholi, Dist : Kalaburagi.

...Appellant.

(Plaintiff before trial court)

(By Sri.C.V.Jadhav Advocate)

-Versus-

1) Heemibai W/o Late Shankar,
Age : 55 Years, Occ : Agriculture,
2) Suresh S/o Late. Shankar,
Age : 29 Years, Occ : Agriculture,
3) Anjanabai W/o Late Satish,
Age : 37 Years, Occ : Anganwadi Leader,
All are R/o H.No.5-34, Shivaramnayak
Salagarbasantpur, Tq: Chincholi,
Dist: Kalaburagi.

...Respondents

(Defendant No.1 to 3 before the Trial Court)

(R-1 to 3 by.Sri.J.P.A Advocate.)



Date and nature of the decree or Order appealed against.	01-04-2024 Suit for Declaration and permanent injunction.		
Date of institution of the appeal	12-02-2025		
Date on which the Judgment was pronounced	10-08-2026		
Duration of the appeal	Years 01	Months 05	Days 29

J U D G M E N T

This is the appeal filed by the appellants being aggrieved by judgment and decree passed by Addl. Civil Judge and JMFC, Chincholi in OS No.49/2019 dated 01-04-2024.

2. The parties to the appeal are referred with their ranks as assigned in the Trial Court for the sake of convenience of discussion.

3. **The brief facts of plaintiff's case are as follow :-**

It is the specific case of the plaintiff is that, the plaintiff has filed the said suit for the relief of declaration and injunction in



respect of suit schedule property land Sy.No.67/2008 measuring 2 Acre 39 guntas bounded on East : Land of Shivaram, West : Land of Teju, North : Land of Shivaram Nayak Tanda, South : Land of Shivaram. It is the case of the plaintiff that, one late Ratnu was the owner in possession of land Sy.No.67/b measuring 12 acre 32 guntas.

4. Thereafter his children ie Govinda who is the father of the plaintiff became the owner in possession of the said property, after death of the father of the plaintiff, the plaintiff became the owner in possession of the suit property. Further it is the case of the plaintiff that, the defendants have created an application showing that, he(plaintiff) does not have any objection to mutate the suit property in the name of Husband of defendant No.1 by colluding with the revenue officials and mutated the suit property in the name of husband of defendant No.1 and the defendants are trying to interfere with the peaceful possession of the plaintiff over the suit property. Hence, plaintiffs has filed the suit.



5. After the presentation of the plaint, same was registered and suit summons were issued and duly served on the defendants and defendants have put their appearance and filed their common written statement. Wherein, they denied the averments of the plaint and stated that, the plaintiff has not impleaded the grand son of defendant No.1 in the present suit. The father of the plaintiff by name Govind Rathod sold the suit property orally for consideration amount of Rs.90/- in favour of Rupla who was the father-in-law of defendant No.1 before the independence. Since from, the said Rupla became the owner in possession of the suit property. Thereafter, the plaintiff and his father had moved to Korvi Dodda Tanda and stayed at several years. Since, Rupla was cultivating the suit land as an owner with possessor, later the Rupla and his son Shankar together demanded to plaintiff to register the said land in their favour, then plaintiff told to them that, "we are not here, we have already sold the land and we have given it with possession, why are you register it, just pay me the expenses which will incur for



registration, I will transfer it in your name." then the plaintiff himself filed an application before the Tahasildar to mutate the suit property in the name of Shankar by taking amount of Rs.3,000/- in the presence of witnesses and transferred the suit land in the name of Shankar. Thereafter, said Shankar has also took the loan on the suit property from Pragati Krishna Rural Bank, Branch Chimmanacud, further stated that, the suit is barred by Limitation as mutation took place in the year 1989-90 as per the application filed by the plaintiff. The suit is not maintainable, hence defendants prays to dismiss the suit.

6. On the basis of above narrated pleadings of the parties, the Trial Court has framed the following issues ;

1. Whether the plaintiff proves that, he is the owner and in possession of the suit schedule property ?
2. Whether the plaintiff proves that, the husband of the defendant No.1 was illegally changed the Khatha in his name ?



3. Whether the plaintiff proves that, the father in-law of the 1st defendant was the bonafide purchaser of the suit property ?
4. Whether the suit of plaintiff is bad for non joinder of the necessary parties ?
5. Whether the defendants prove that, the suit of the plaintiff is barred by Law of limitation ?
6. Whether the defendants proves that, the suit of the plaintiff is not maintainable under law ?
7. Whether the plaintiff is entitled for relief as sought ?
8. What order or decree ?

7. The plaintiff in order to prove his case has got examined himself as Pw.1 and got marked two documents at Ex.P1 to Ex.P14. On the other hand the defendant No.1 examined herself as Dw.1, but no documents are got marked on behalf of defendants.



8. The Trial Court after hearing the arguments canvassed by both side and on going through oral and documentary evidence placed before it, has dismissed the suit with cost.

9. The appellant who is the plaintiff before the Trial Court being aggrieved by the judgment and decree passed by the Trial Court have preferred the present appeal on the following grounds ;

GROUND FOR APPEAL

10. The judgment and decree passed by the trial court is not only against the facts and law, but also against the principles of natural justice.

11. The trial court has not properly considered the evidentiary value of the bunch of documentary and oral evidence on record produced by the plaintiff and hence the judgment and decree under appeal is against law.

12. The suit land is owned and possessed by the plaintiff. In support of the said contention, the plaintiff has produced the RTC



extract for the year 1983-84 to 1987-88 as per Ex.P4. Without any title document the name of father of defendant namely Shankar Rupla is came to be entered in the RTC extract on the suit land by rounding the name of the plaintiff Premsingh. It is the settled principle of law that, mere mutation entry do not confer any title in favour of the defendants. Moreover, the entry made in the revenue records do not prove as a document of title. Admittedly revenue records shows that the suit property was owned and possessed by the plaintiff and as such the onus of proof shifts upon the defendant to prove as to how his name has been entered in the revenue records. In view of the admitted facts and records the plaintiff has proved his title to the suit property, the trial court has not justified in dismissing the suit of the plaintiff, therefore the impugned judgment and decree passed by the trial court is not sustainable in law.

13. The trial court based on a stray admission of Pw.1 with regard to possession has come to an inncorrect conclusion and



dismissed the suit, though answered issue No.1 and 2 in affirmative and 3 in the negative. It is the settled preposition of law in view of Sec.17 to 19 of the Indian Evidence Act that an admission must be clear, unambiguous and unequivocal admission on record and a mere stray admission has no legal sanctity. Moreover, cross examination of Pw.1 nullifies the said fact. The trial court without considering such aspect of the matter has dismissed the suit.

14. It is further contended that, the father of the plaintiffs sold the suit property to Rupla before independence and as such Rupla became the owner and possessor of the suit property and when Shankar Asked him to execute the registered sale deed, the plaintiff filed an application before Tahsildar for mutation of the suit property in the name of Shankar. The said contention taken by the defendants is contradiction with the written statement. The defendants contended that the Rupla has purchased the suit property from the father of plaintiff before independence and on



questioning about it the plaintiff got mutated the property in the name of defendants by filing the application. But, to prove the said fact, defendants have not produced any documents. The plaintiff is the owner in possession of the suit property and the defendnats have failed to prove the alleged factum of transaction of sale and hence in view of such legal aspect the matter, the trial court would have decreed the suit. The defendants have failed to produce the oral and documentary evidence to prove the alleged transaction of sale of suit property, but the trial court would have decreed the suit of the plaintiff. The trial court while answering the issue No.5 and placing reliance on the judgment of the Apex Court is not correct. The plaintiff just before filing the suit came to know about the mutation of suit property in the names of defendants illegally and as such the suit is well within time, therefore the answer for issue No.5 by the trial court is not sustainable in law. Ex.P12 shows that, how the plaintiff has acquired the title of the ancestral landed property, which is subject matter of the suit. The alleged mutation order will not



confer the title of the defendants over the suit property. The trial court without considering the documentary evidence has come to incorrect conclusion and dismissed the suit. Therefore, among all other grounds the appellants prayed to allow the appeal by setting aside the judgment and decree passed in O.S.No.49/2019.

15. The records of the Trial Court have been secured.

16. Heard the arguments canvassed by both side and perused the material on record.

17. On the basis of above narrated facts and pleadings of parties the following points arise for my consideration;

1. Whether the appellant/plaintiff has shown that, the Trial Court has committed an error in dismissing the suit of plaintiff for the relief of declaration and permanent injunction ?
2. Whether the interference of this Court is required ?
3. What order or decree?



18. My answer to the above said points are as follow:

Point No. 1 : In the negative.

Point No. 2 : In the negative.

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

REASONS

19. Point No.1 and 2 : As these points are inter connected to each other they are taken up together for common discussion in order to avoid the repetition of facts.

20. It is the specific case of the plaintiff that, one Late Ratanu was the owner in possession of land Sy.No.67/b measuring 12 acre 32 guntas. Thereafter, his children ie Govind who is the father of plaintiff became the owner of the said property by way of partition. After death of father of the plaintiff the plaintiff became the owner in possession of the suit property. The defendants have created the application showing that, plaintiff does not have any objection to mutate the suit property in the name of husband of defendant No.1 by colluding with the



revenue officials and mutate the suit property in the name of husband of defendant No.1 and on that base, they are trying to interfere with the peaceful possession of plaintiff over the suit property. Hence, he prays to decree the suit.

21. On the other hand the defendants have been appeared through their counsel and filed joint written statement wherein they denied the averments of the plaint and contended that, the father of the plaintiff by name Govinda Rathod sold the suit property orally for consideration amount of Rs.90/- to the Rupla who was the father-in-law of defendant No.1 before the independence. Since from the said purchase, the said Rupla became the owner and in possession of the suit property. Thereafter, the plaintiff himself filed an application before the Tahasildar and mutated the suit property in the name of Shankara, who is the husband of defendant No.1. The suit filed by the plaintiff is belated and is not maintainable in the eye of law. Hence, they prays to dismiss the suit.



22. The plaintiff was examined before the Trial court as Pw.1 and got marked Ex.P1 and P14 In his examination in chief, he reiterated the averments made in the plaint. On the other hand, the defendants in order to prove their defence defendant No.1 was examined before the trial court as Dw.1, but not produced any documents and also not offered for cross examination.

23. Now let us consider the oral evidence of both parties in consonance with the documentary evidence adduced by them. It is significant to note here that, the plaintiff has specifically contended that, he is the owner with possessor of the suit land through his predecessors. The defendants without having any right they created the application and mutated the suit property in the name of husband of defendant No.1 colluding with revenue officials and trying to interfere over the suit schedule property.

24. In support of his contention, he produced Ex.P1 to P14 documents. Ex.P1 is the attested copy of records of rights of



land Sy.No.67/b measuring 12 acre 27 guntas standing in the name of Narayanreddy for the year 1963-64. Ex.P2 is the certified copy of record of rights of suit schedule property standing in the name of Narayanareddy from the year 1963 to 1981. Ex.P3 is the attested copy of record of rights of suit schedule property standing in the name of Govind S/o Ratnu by deleting the name of Narayanreddy from the year 1982 to 1985. Ex.P4 is the attested copy of record of rights of suit schedule property standing in the name of Premsing S/o Govind by deleting the name of Govind S/o Ratnu for the year 1983-84 to 1987-1988. Ex.P5 to 7 are the attested copy of records of rights of suit schedule property standing in the name of Shankar S/o Rupla by deleting the name of Premsing S/o Govind for the year 1988-89 to 1999-2000. Ex.P8 to 11 are the records of rights of suit schedule property stood in the name of Shankar S/o Rupla from the year 2000-2001 to til today. Ex.P12 is the certified copy of mutation extract, which shows that the land to the extent of 12 acre 32 guntas was granted by the learned Tahasildar Chincholi



to the Govind S/o Ratnu dated 29-01-1983. Ex.P13 is the attested copy of mutation entries, which shows that on the basis of application submitted by the Govindratnu, Hemashetty S/o Seetaram, Premsingh S/o Govind the entire land measuring 12 acre 32 guntas, was divided and suit land was allotted to plaintiff. Ex.P14 is the attested copy of mutation, which shows that on the base application submitted by the plaintiff the suit land was mutated in the name of Shankar S/o Rupla, who was the husband of defendant No.1.

25. The learned counsel for the defendants was cross examined the Pw.1 before the trial court, after perusal of the entire cross examination of Pw.1. Pw.1 in his cross examination he admitted that the suit was filed for recovery of possession. Further Pw.1 admitted to the suggestion that, after the death of Shankar his wife and children are in possession of suit land and are cultivating the same till today.



26. Pw.1 further in his cross examination admitted that as per his application in year 1990 the suit property transferred in the name of Shankar. Pw.1 further deposed that, he does not know. Looking to this aspect of the evidence, though Pw.1 ignores the suggestion by saying that he does not know, but not specifically denied the suggestion.

27. From the above admissions it is crystal clear that, as on the date of filing the suit, the defendants are in possession of the suit and as per the mutation made by the plaintiff himself, the defendants are in possession and enjoyment of the suit property till today. When Pw.1 in his cross examination has clearly admitted that he has made application for mutation in the name of husband of defendant No.1 and also admitted the possession of defendants, then there is no question of appreciation of evidence of Pw.2 and 3 in this regard.

28. The plaintiff/appellant has not at all produced any single document to show his title over the suit land. Moreover, the



mutation order available on record clearly goes to show that the plaintiff himself has mutated the suit property in favour of husband of defendant No.1 and he has not produced any documents to show that he has challenged the said mutation before the competent revenue authority. Moreover, Pw.1 in his cross examination also admitted that as per his application the mutation has been executed in the name of husband of defendant No.1.

29. The appellant/plaintiff in the appel ground has contended that only on the stray admission the trial court has dismissed the suit incorrectly. Looking to all the admissions given by the Pw.1, which are not the stray admissions, the Pw.1 being the prudent man after listening the suggestion after through knowledge and understand has given the admission which cannot be treated as stray admission as stated by the appellant in appeal ground. Therefore, the trial court after going



through the entire records and admissions given by the Pw.1 to 3 has come to right conclusion.

30. Looking the ground urged by the appellant in the appeal memo regarding stray admission by the Pw.1, this court wants to rely on Sec.25 of Bharatiya Sakshya Adhiniyam, 2023 (Sec.31 of Indian Evidence Act 1872), which reads as under ;

"Admissions are not conclusive proof of the matters admitted but they may operate as estoppels under the provisions hereinafter contained."

It means that when an admission is proved against a person, it is not as if that person is prevented from showing that the admission was wrongly made. It does not operate as conclusive proof, and so evidence to rebut it, or to show that it was wrongly made, could be given. But if a person to whom the admission is made believes it and acts upon it, then the person making the admission would be prohibited or estopped from showing that the admission was wrongly made. Therefore, the above provision is applicable to the present case on hand, as the Pw.1 in his cross



examination admitted regarding filing application before the Revenue Authority for mutation and handing over of possession. The said mutation was acted upon and accordingly the defendants are in possession of the suit properties. Therefore, the Pw.1 is estopped from taking the plea that it is a stray admission.

31. Herein this case, the appellant/plaintiff is claiming his title over the suit property only on the basis of revenue documents such as Record of Rights of Suit land and Mutation extracts. On the other hand made an allegation against the defendants that husband of defendant No.1 has fraudulently created the mutation in his name. The plaintiff has claiming his title over the suit property through the mutation order and revenue records. Whereas the defendants are in possession and enjoyment of suit property on the basis of acting upon the mutation which was made by the plaintiff himself in the name of husband of defendant No.1, accordingly revenue entries are



changed and defendants are in possession and enjoyment of the suit properties. Now the allegation of plaintiff that the said mutation is created by the defendant fraudulently colluding with the revenue authority is not believable, as the plaintiff has not produced any cogent document even though he stated in his plaint that he has challenged the said mutation order. Therefore, without the proper documents of Title Deeds, the plaintiff cannot claim his title over the suit property only on the mutation extract, which is also standing in the name of husband of defendant No.1. Under the present circumstances it is just and proper to rely the Sec.121 of Bharatiya Sakshya Adhiniyam 2023 (Sec.115 of Indian Evidence Act), which reads as under ;

"When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such



person or his representative, to deny the truth of that thing."

Illustration

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards become the property of A, and A seeks to set-aside the sale on the ground that, at the time of the sale, he had no title, He must not be allowed to prove his want of title.

This rule is the same as the rule in English which is described as estoppel in pais, or, as it is sometimes called estoppel by conduct.

32. From the conduct of plaintiff and as per his admission the mutation has been made in the name of defendants, it has been acted upon, accordingly they are in possession of suit properties as on the date of suit, now as per above principle of estoppel, the plaintiff is stopped from claiming the title over the suit property by way of Mutation. Moreover, the plaintiff has utterly failed to prove that the defendants have fraudulently created the mutation in their names.

33. It is well settled principle of law 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. Therefore, it is clear that the legal possession in a suit for declaration of title and possession would 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 are 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 plaintiffs own title, the plaintiff must be non suited. The plaintiff must prove his case by his won by leading independent oral and documentary evidence and by providing title documents, but not find out the weakness of the defendant's case.

34. The learned counsel for the appellant/plaintiff filed written argument by reiterating the entire appeal memo grounds,



to allow the appeal by setting aside the judgment dated 01-04-2024 in O.S.No.49/2019.

35. On the contrary learned advocate for respondents has vehemently argued that, the Trial Court has properly appreciated the oral and documentary evidence adduced by plaintiff before it. Hence there is no need to set-aside the judgment decree passed by the trial court. Therefore prayed to dismiss the appeal and to confirm the judgment and decree passed by the trial court.

36. After having heard both side and considering the facts and circumstances of the case it appears that, the plaintiff has utterly failed to prove his title and possession over the suit schedule property by adducing the evidence and by producing the proper title documents as on the date of suit.

37. It is significant to note here that, the appellant in his appeal contended that, the trial court has committed the error by holding that, the suit is barred by law of limitation. In this aspect it is just and proper to go through the cross examination of



Pw.1. Pw.1 in his cross examination clearly admitted that, in the year 1988 only the plaintiff/appellant has challenged the mutation extract standing in the name of husband of defendant No.1. This admitted fact clearly establish that, in the year 1988 itself the plaintiff/appellant is having knowledge that, the suit land is standing in the name of husband of defendant No.1 and the defendants are in possession of suit land, which clearly goes to show that, the plaintiff is well aware of possession and enjoyment of suit properties by the defendants, but the plaintiff has not claimed his title over the suit property within 3 yars ie from 1988 as per Article 58 and 59 of Limitation Act. The appellant inspite of knowing the said fact has filed the suit for declaration in the year 2019, which is time barred. The trial court after looking all these facts has rightly come to the conclusion that the suit is time barred.

38. Further more, as already admitted by the Pw.1 that the suit property is in the possession of defendants, the plaintiff filing



the present suit for declaration of title without seeking the possession is not maintainable.

39. Thus, in view of the oral and documentary evidence and afore said settled possession of law, the trial court has rightly appreciated the oral and documentary evidence and dismissed the suit of the plaintiff. The plaintiff/appellant has not made any grounds to interfere into the impugned judgment passed by the Trial court. Accordingly, I answer Point No.1 and 2 in the Negative.

40. **Point No.3:-** In view of my findings on point No.1 and 2 as discussed supra the appellants have not made out grounds to allow the appeal. Hence, I proceed to pass the following :-

ORDER

The Regular Appeal filed by the appellant/plaintiff is hereby dismissed with costs.

Consequently, the judgment and decree passed by Trial Court in OS No.49/2019 dated 01.04.2024 is hereby confirmed.



Draw decree accordingly.

Office is hereby directed to re-transmit the records of Trial Court with certified copy of this Judgment and decree.

(Directly dictated to the stenographer on computer and typed by her, revised by me and then pronounced in the open court, on this 10th day of August 2026)

(Anil Shekhanavar)
Senior Civil Judge & JMFC,
Chincholi.