

KAKL200025112014



**IN THE COURT OF THE I ADDL CIVIL JUDGE & JUDICIAL
MAGISTRATE FIRST CLASS AT BANGARPET.**

:PRESENT:

SRI.CHANDRASHEKHAR ALABUR,

B.A., LL.B.,

I ADDL., CIVIL JUDGE & JMFC., BANGARPET.

O.S. NO.360/2014

DATED THIS 01st DAY OF JULY 2026

PLAINTIFF/S:-

Sri N. Venkatesh,

S/o Kutchappa,

Aged about 63 years,

Residing at No.77,

Near BGML Guest House,

Oorgaum Post, Kolar Gold Field.

(Rep. by **Sri. A.M.V.**, Advocate)

-V/S-

DEFENDANT/S:-

- 1. Sri. Thimmappa**
(also known as N. Ramesh),
S/o Kutchappa,
Aged about 65 years.
- 2. Smt. Jayalakshamma,**
W/o Thimmappa,
Aged about 57 years.

Both are residing at
First Main Road, 15th Cross Road,
Bhadrachari Compound,
Near Gandhi Nagar, Kolar Town.

(Rep. by **Sri. K.K.M.**, Advocate)

1	Date of institution of the suit	09.12.2014
2	Nature of the suit	Declaration
3	Date of recording of evidence	04.07.2017
4	Date on which Judgment was pronounced	01.07.2026
5	Total duration	<u>Year/s Month/s Day/s</u> 11 06 22

(CHANDRASHEKHAR ALABUR)

I Addl. Civil Judge and J.M.F.C.,
Bangarpet

J U D G M E N T

The plaintiff has instituted this suit against the defendants seeking a decree of declaration of absolute title over the suit schedule property, and a further declaration to set aside the registered Gift Deed executed by Defendant No. 1 in favor of Defendant No. 2 in respect of the suit schedule property

as null, void, and not binding upon the plaintiff, along with costs and other consequential reliefs.

2. BRIEF FACTS OF THE PLAINT:

It is the case of the plaintiff that the suit schedule property is agricultural land bearing Survey No. 44, measuring 6 acres 5 guntas (including 25 guntas kharab and 6 guntas phut kharab), assessed at Rs. 6.05 paise, situated at Mooganahalli Village, Budikote Hobli, Bangarpet Taluk, which is fully described in the plaint schedule. The suit schedule property originally belonged to one Papanna, S/o Hanumappa. The said property was 'Thoti Inam' land, which Papanna had acquired absolute ownership over via a re-grant from the Government of Karnataka.

3. The plaintiff asserts that the original owner, Papanna, was his maternal uncle and that Papanna had no biological children. The plaintiff explicitly pleads that the said Papanna adopted him as his son. Consequently, all records stood in the name of Papanna during his lifetime. It is alleged

that after the demise of Papanna, Defendant No. 1, who happens to be the biological elder brother of the plaintiff, surreptitiously and without the consent or knowledge of the family members, got the revenue khatha mutated into his own name by colluding with the local revenue authorities on the basis of fabricated and concocted documents.

4. The plaintiff further contends that Defendant No. 1, without holding any independent manner of right, title, or interest, went on to execute a registered Gift Deed in Favor of his wife, Defendant No. 2, for an extent of 2 acres 20 guntas out of the suit schedule property. The plaintiff claims that despite residing at Kolar Gold Fields, he discovered these fraudulent entries standing in the names of Defendant Nos. 1 and 2 only upon securing certified copies of the Record of Rights, Tenancy and Crops (RTC) extracts. The plaintiff asserts that Papanna never alienated the property or consented to any transfer during his lifetime, making the entries illegal and void. Since Defendant No. 1 began attempting to alienate the property to third parties, the plaintiff submitted a representation to the

Sub-Registrar, Bangarpet, on 28.11.2012, who advised him to approach the competent civil court. Hence, the plaintiff has brought the present suit. Hence prays to decree the suit.

5. Upon due institution of the suit, this Court issued suit summons to Defendant Nos. 1 and 2. The summonses were duly served through the process of the Court. Defendant Nos. 1 and 2 entered their appearance through their learned counsel, and Defendant No. 1 filed a detailed written statement, which was subsequently adopted by Defendant No. 2.

6. FACTS OF THE WRITTEN STATEMENT:

The defendants completely deny the right, title, or interest claimed by the plaintiff over the suit schedule property. While admitting that the property originally belonged to Papanna as a Thoti Inam land granted by the Government, they explicitly deny the claim that Papanna adopted the plaintiff as his son.

7. The positive case set up by Defendant No. 1 is that Papanna, S/o Hanumappa, was the maternal uncle of both the

plaintiff and Defendant No. 1, having married Defendant No. 1's biological elder sister, Varadhamma. As the couple was childless, Papanna had fostered, brought up, and looked after Defendant No. 1 right from his childhood. The defendants contend that the suit property was the self-acquired property of Papanna. They explicitly plead that during his lifetime, Papanna executed a valid, registered Will dated 31.03.1980 (registered on 23.04.1980), whereby he bequeathed the suit schedule land (Survey No. 44), land bearing Survey No. 36 measuring 18 guntas, and a tiled house bearing V.P. Khatha No. 31 and Kaneshmari No. 12 in favor of Defendant No. 1.

8. The defendants state that Papanna passed away on 03.09.1993, and it was Defendant No. 1 who performed his funeral obsequies and ceremonies. Thereafter, Defendant No. 1 took care of his sister Varadhamma until her death in 2001. By virtue of the operation of the said registered Will, the revenue khatha and RTC entries were lawfully transferred to the name of Defendant No. 1, who has been in continuous, peaceful, and uninterrupted possession of the property. Exercising his

absolute title, Defendant No. 1 executed a valid registered Gift Deed dated 09.12.2010 in favour of his wife, Defendant No. 2, for an extent of 2 acres 20 guntas in Survey No. 44. Thus, the defendants pray for the outright dismissal of the suit.

9. Initially, this suit was dismissed by the trial court. Aggrieved by the said judgment, the plaintiff preferred a regular appeal in R.A. No. 33/2021. The Hon'ble Appellate Court, via its judgment dated 03.01.2024, allowed the appeal, set aside the judgment, and remanded the matter back to this trial court with a structural direction to frame necessary additional issues concerning the status of the adoption claimed by the plaintiff and the execution and proof of the Will set up by the defendants, and to afford sufficient opportunities to both sides to lead evidence.

10. Consequent to the remand order, this Court on 05.06.2024 framed additional issues. Despite providing ample opportunities, both parties explicitly chose not to lead any additional oral or documentary evidence on the newly framed

additional issues, stating that the existing material available on record is sufficient to address the controversy. Clarifying arguments were heard, and the matter is now posted for judgment.

11. From the pleadings of the parties, the following issues and additional issues arise for consideration:

ISSUES FRAMED ON 16.12.2015:

1. Whether the plaintiff proves his title to the suit schedule property?
2. Whether the plaintiff further proves that, the Gift deed dated: 07.02.2011 executed by the 1st defendant in favor of the 2nd defendant is null and void and same is not binding on him?
3. Whether the plaintiff is entitled for the reliefs as sought for?
4. What order or decree?

ADDITIONAL ISSUES FRAMED ON 05.06.2024 (PER APPELLATE DIRECTIONS):

1. Whether the plaintiff proves that he is the adopted son of the said Papanna?

2. Whether the defendant No.1 proves that the said Papanna has executed a registered will deed dtd.31.03.1980 in his favour with respect to property bearing Sy. No.36 measuring 18g and house property bearing VP katha No.31 and 12?

12. FINDINGS: After scrutinizing the entire oral and documentary evidence on record, the observations, and legal submissions, this Court answers the issues as follows:

Issue No. 1	:	In the Negative.
Issue No. 2	:	In the Negative.
Issue No. 3	:	In the Negative.
Additional Issue No. 1	:	In the Negative.
Additional Issue No. 2	:	In the Affirmative.
Issue No. 4	:	As per the final operative portion.

REASONS

13. ADDITIONAL ISSUE NO. 1: Since the plaintiff's entire claim over the suit schedule property as a legal heir hinges upon his status as the adopted son of the deceased absolute owner Papanna, this additional issue is taken up first for consideration.

14. The plaintiff (PW-1) in his examination-in-chief affidavit has asserted that Papanna adopted him as his son. To corroborate this, the plaintiff has relied upon the testimonies of PW-2 (Narasimhappa), PW-3 (Nagaraj), and PW-4 (Venkateshappa). These witnesses have deposed that Papanna brought up the plaintiff in his family, that the plaintiff looked after Papanna, and that the plaintiff performed his funeral rites.

15. While this Court observes that such evidence is direct evidence of conduct and relationship demonstrating affection, it is well-settled law that proof of relationship and affection cannot substitute for the strict legal requirements of a valid adoption under the Hindu Adoptions and Maintenance Act (HAMA), 1956. Section 11 of HAMA mandates that there must be proof of an actual giving and taking of the child in adoption with the intent to transfer the child from the family of its birth to the family of its adoption.

16. On cross-examination, the foundational legal gaps in the plaintiff's case are thoroughly exposed:

i. In his own cross-examination, PW-1 explicitly admits:

"I do not know on which date and at what age Papanna took the plaintiff in adoption. I do not know if the adoption deed is registered in the Sub-Registrar's office. (The witness states that I have not produced the adoption deed of Papanna in the Court...)"

ii. Furthermore, a glaring contradiction arises from the cause title itself, wherein the plaintiff continues to describe himself as "**Sri N. Venkatesh, S/o Kutchappa**", thereby maintaining his biological parentage record rather than his adopted legal identity. No explanation or revenue record has been produced to explain this inconsistency.

17. The absence of a registered adoption deed is not fatal by itself, as adoption can be proved by demonstrating the actual ceremonies and factum of giving and taking under Hindu law, and Section 16 of HAMA merely creates a rebuttable presumption when a registered deed is produced. However, in the absolute absence of a registered deed, the plaintiff bears a heavier burden to prove the essential ingredients of a valid

adoption, such as the specific date of adoption, the age of the child at that time, and the explicit performance of the physical ceremony of giving and taking. The oral evidence produced by the plaintiff completely fails to touch upon these mandatory statutory requirements. Calling himself the nephew or showing that he performed funeral obsequies cannot confer the legal status of an adopted son. Performance of funeral rites is a matter of religious or familial conduct often carried out by close relative nephews and does not form proof of a valid adoption. Consequently, the plaintiff has completely failed to establish his status as an adopted son. Hence, **Additional Issue No. 1 is answered in the Negative.**

18. ADDITIONAL ISSUE NO. 2: To substantiate his title over the property of deceased papanna, defendant no. 1 has produced the original registered will dated 31.03.1980 (registered on 23.04.1980), marked as **ex.D-1(b)**.

19. A preliminary scrutiny reveals that the wording of this additional issue (as derived from the appellate court's

remand direction) specifies Survey No. 36 measuring 18 guntas and certain house properties. However, the core subject matter of the plaint is Survey No. 44, measuring 6 acres 5 guntas. This Court notes that it is bound to evaluate whether the propounder has legally proved the execution of the Will **Ex.D-1(b)** as an indivisible instrument. If the instrument is duly proved in compliance with the rules of evidence, its execution must be affirmed irrespective of any restrictive layout or narrow phrasing in the issue itself. Moreover, a comprehensive review of the text of the Will indicates that it specifically incorporates multiple properties of the testator, including Survey No. 44 with an extent of 6 acres 5 guntas, Survey No. 36 with an extent of 18 guntas, and a house in Moganahalli village. Therefore, the adjudication of this issue encompasses the execution of the Will as a whole.

20. To satisfy the stringent statutory standards of Section 63 of the Indian Succession Act, 1925, and Section 68 of the Indian Evidence Act, 1872, the propounder must prove due execution and attestation through at least one living

attesting witness. Where all attesting witnesses are deceased, Section 69 of the Indian Evidence Act applies, requiring proof that the attestation of at least one attesting witness is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

21. The defendants have successfully met the mandate of Section 69 through compelling and credible secondary evidence:

- i. They examined **DW-2 (Rajagopal)**, the biological son of one of the attesting witnesses, Chikka Gopalappa. DW-2 deposed that his father passed away approximately ten years prior. He examined the original document **Ex.D-1(b)** and definitively identified the signature of his father as Witness No. 3, which was marked as **Ex.D-1(c)**. This Court finds the testimony of DW-2 entirely credible, reliable, and unshaken during cross-examination.
- ii. They further examined **DW-3 (B.C. Govinda)**, the son of the deceased scribe/document writer, B. Chikkavenkatappa. DW-3 testified under oath that his father was a professional document writer during

his lifetime and has since passed away. DW-3 scrutinized the handwriting on **Ex.D-1(b)**, certified it as his late father's signature and handwriting, and the signature was marked as **Ex.D-1(d)**.

- iii. The plaintiff (PW-1), during his cross-examination, was confronted with a copy of the Will, and although he initially vacillated on the signature of Papanna, he ultimately could not disprove the execution.

22. The plaintiff's contention that the gap between the execution of the Will (1980) and the death of Papanna (1993) constitutes a suspicious circumstance is legally unsustainable. A gap of 13 years is common in testamentary affairs, as Wills are naturally executed by testators during health and operate decades later upon their demise. No genuine suspicious circumstances, such as fraud, coercion, or lack of a sound disposing mind, have been shown or proved by the plaintiff. Consequently, the requirements of Section 69 of the Indian Evidence Act stand fully satisfied, and the valid execution of the registered Will **Ex.D-1(b)** is established. Hence, **Additional Issue No. 2 is answered in the Affirmative.**

23. ISSUE NO. 1 & 2 : These issues are interconnected and are therefore discussed together.

The law is well settled that a plaintiff seeking a decree of declaration of title can only succeed on the strength of his own case and cannot rely upon any perceived weakness or gaps in the defence set up by the defendants. In the present case, since the plaintiff has entirely failed to prove that he is the legally adopted son of Papanna, he holds no legal character, status, or ancestral right of inheritance over the estate of Papanna.

24. Conversely, Defendant No. 1 has proved the registered Will (**Ex.D-1(b)**), which explicitly bequeathed the suit schedule property (Survey No. 44, measuring 6 acres 5 guntas) to him. Following the death of Papanna on 03.09.1993, the revenue authorities properly processed the mutation and khatha entries under M.R. No. 13/1993-94 in favor of Defendant No. 1. The certified entries in columns 7 and 8 of the RTC extracts for the years 1991-92 to 1997-98 systematically record the name of Defendant No. 1, reflecting his long,

uninterrupted, and lawful revenue possession over the suit property.

25. A minor ambiguity exists regarding the name of Defendant No. 1, who is referred to as **Thimmappa** in the cause title and written statement, but signed and deposed as **N. Ramesh** as DW-1. This Court clarifies that N. Ramesh and Thimmappa are one and the same individual, and this minor nomenclatural variation does not affect the identity of the party or the integrity of his long possession.

26. A further discrepancy exists regarding the exact date of the Gift Deed executed by Defendant No. 1 in favour of his wife, Defendant No. 2. The plaint states it is dated 07.02.2011, while the written statement records it as 09.12.2010. This Court has scrutinized the original registered Gift Deed, marked as **Ex.D-12**, and finds that it was executed on 09.12.2010, while the subsequent revenue mutations were updated in early 2011. Since Defendant No. 1 is the absolute owner of the land by virtue of the proven Will, he possessed the full legal capacity

to execute the Gift Deed **Ex.D-12** transferring 2 acres 20 guntas of Survey No. 44 to his wife.

27. Even if, for the sake of argument, any part of the Will's proof were considered insufficient, the plaintiff's suit would still inevitably fail. Because the plaintiff completely failed to prove his adoption, he remains a legal stranger to the property under Section 34 of the Specific Relief Act, 1963, and holds no legal status to challenge the revenue entries or the validity of the Gift Deed executed between the defendants. **Therefore, Issue No. 1 and Issue No. 2 are answered in the Negative.**

28. ISSUE NO. 3: Under section 34 of the Specific Relief Act, 1963, a declaration of title is a discretionary equitable remedy. Since the plaintiff has entirely failed to prove his legal status as an adopted son and has no independent right or title over the suit property, he is not entitled to any declaratory or injunctive relief against the defendants. The suit is wholly

devoid of merits. **Hence, Issue No. 3 is answered in the Negative.**

29. ISSUE NO. 4: In view of the categorical findings recorded on issue nos. 1 to 3 and additional issue nos. 1 and 2, the suit of the plaintiff is liable to be dismissed. Hence, this Court proceeds to pass the following order:

ORDER

The suit of the plaintiff is hereby dismissed.

Under the facts and circumstances of the case, parties are directed to bear their own costs.

Draw up a decree accordingly.

*(Typed by me directly in the computer, aligned by the stenographer, revised, corrected and then pronounced by me in the open court on this **01st day of July 2026**).*

(CHANDRASHEKHAR ALABUR)
I Addl. Civil Judge and J.M.F.C.,
Bangarpet

ANNEXURES

I. List of Witnesses Examined on behalf of the Plaintiff:

PW-1 : Sri. N. Venkatesh (Plaintiff)
PW-2 : Sri. Narasimhappa
PW-3 : Sri. Nagaraj
PW-4 : Sri. Venkateshappa

II. List of Documents Marked on behalf of the Plaintiff:

Ex.P-1 : Certified copy of the order passed by the
Assistant Commissioner, Kolar.

Ex.P-1(a) : Disputed signature of Papanna.

Ex.P-2 to 9: Certified copies of Pahanis / RTC extracts
(8 Numbers) tracking Survey No. 44.

Ex.P-10 to 12: Certified copies of Mutation Register (M.R.)
extracts (3 Numbers).

Ex.P-13 : Unavailability Certificate regarding the
death record of the plaintiff's biological
father.

Ex.P-14 : Office copy of the legal notice submitted to the Sub-Registrar, Bangarapet, with acknowledgment.

Ex.P-15 to 18: Certified copies of RTC's pertaining to Survey No. 44 (4 Numbers).

Ex.P-19 to 24: Certified copies of RTC's records pertaining to Survey No. 36 (6 Numbers).

Ex.P-25 : Certified copy of a mutation note/Tippani tracking Survey No. 36.

Ex.P-26 : Certified copy of the Settlement Akar Bond tracking Survey No. 36.

Ex.P-27 & 28: Certified copies of mutation note/Tippani tracking Survey No. 44 (2 Numbers).

Ex.P-29 : Certified copy of the Settlement Akar Bond tracking Survey No. 44.

Ex.P-30 : Certified copy of the police complaint filed at Kamasamudram Police Station dated 01.12.2015.

- Ex.P-31 : Certified copy of the police acknowledgment of the complaint.
- Ex.P-32 : Certified copy of the statement given by the 1st Defendant before the police.
- Ex.P-33 : Certified copy of the police endorsement dated 24.02.2015.
- Ex.P-34 & 35: Certified copies of acknowledgements issued by Kamasamudram Police Station dated 09.11.2018.
- Ex.P-36 : Certified copies of the case records in suit O.S. No. 259/2018.
- Ex.P-37 : Certified copy of the compromise application filed in O.S. No. 259/2018.

III. List of Witnesses Examined on behalf of the Defendants:

- DW-1 : Sri Thimmappa / N. Ramesh (Defendant No. 1)
- DW-2 : Sri Rajagopal
- DW-3 : Sri B.C. Govinda

IV. List of Documents Marked on behalf of the Defendants:

- Ex.D-1 : Certified copy of the registered Will processed under M.R. No. 13/1993-94.
- Ex.D-1(b) : Original copy of the registered Will executed by Papanna dated 31.03.1980.
- Ex.D-1(c) : Attesting signature of the deceased witness, Chikka Gopalappa, on the original Will.
- Ex.D-1(d) : Signature of the deceased scribe, B. Chikkavenkatappa, on the original Will.
- Ex.D-2 : Certified copy of a second testamentary record executed by Papanna.

*[**Note:** Ex.D-3 omitted due to clerical tracking assignment during trial presentation]*

- Ex.D-4 : RTC with respect to the suit property.
- Ex.D-5 & 6: Certified copies of Mutation Register extracts (2 Numbers).

- Ex.D-7 to 9: Revenue Tax Receipts (3 Numbers).
- Ex.D-10: Original Land Patta Book.
- Ex.D-10(a): Specific internal entry within the Patta Book.
- Ex.D-11: Original Government Re-grant Certificate of Thoti Inam land issued to Papanna in 1975.
- Ex.D-12 : Original registered Gift Deed executed by Defendant No. 1 in favor of Defendant No. 2.
- Ex.D-12(a) to 12(d): Distinct execution signatures appearing on the Gift Deed.
- Ex.D-12(e): Acceptance signature of Defendant No. 2 on the Gift Deed.
- Ex.D-12(f) & 12(g): Attesting signatures of witnesses Narayanaswamy and Jayaprakash.
- Ex.D-12(h): Signature of the document writer/scribe, S.N. Srinivas.

Ex.D-13 to 16: Certified copies of historical Pahani records tracking the suit land (4 Numbers).

Ex.D-17 : Certified copy of Mutation Register extract detailing record updates.

Ex.D-18 : Copy of Patta Book submitted during active cross-examination.

(CHANDRASHEKHAR ALABUR)
I Addl. Civil Judge and J.M.F.C.,
Bangarpet