

KABR510025542022



**THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
HOSAKOTE.**

PRESENT:

Sri. Arun Kumar.G. B.A., LL.B.
Senior Civil Judge & JMFC,
Hosakote.

Dated this the 24th day of April 2025

O.S.No.747/2022

(Old O.S. No.2115/2008)

Plaintiff/s : Sri.Munisonnappa,
S/o Late.Dyavanna,
Since dead by his L.R's

1a. Smt.Kempamma,
W/o Late.Munisonnappa,
Aged about 93 years,

1b. Smt.Kanthamma,
D/o Late.Munisonnappa,
Aged about 62 years,

1c. Smt.Savithramma,
D/o Late.Munisonnappa,
Aged about 54 years,

1d. Smt.Sunandamma,
D/o Late.Munisonnappa,
Aged about 50 years,

1e. Sri.Narayanagowda,
S/o Late.Munisonnappa,
Aged about 50 years,

All are R/at E.Hosahalli,
Sulibele Hobli, Hosakote Taluk,
Bengaluru Rural District.

(By Sri.A.L.M., Advocate)

- V/s -

- Defendant/s :**
1. Sri.S.S.Police Patil,
S/o not known to the plaintiff,
Aged about 48 years,
R/at Lingaraju Nagara,
25th Cross South,
Mahasharanu Udayannagara,
Hubbli-Dharawada District.
 2. Sri.Lakshminarayana,
S/o Muninanjappa,
Aged about 45 years,
R/at Nandagudi Village & Hobli,
Hosakote Taluk,
Bengaluru Rural District.
 3. Sri.Venkateshappa,
S/o Yalagappa,
Aged about 40 years,
R/at M.Gangasandra Village,
Sulibele Hobli, Hosakote Taluk,
Bengaluru Rural District.
 4. Sri.Narayanappa,
S/o Late.Doddachennappa,
Aged about 45 years,
 5. Sri.Marappa,
S/o Narayanappa,
Aged about 30 years,

Def.No.4 & 5 are R/at
E-Hosahalli Village,
Sulibele Hobli, Hosakote Taluk,

Bengaluru Rural District.

6. The Secretary,
Rural Development & Panchayath Raj,
Third Gate, 3rd Floor, M.S.Building,
Bengaluru-560001.
7. The Executive Engineer,
Panchayath Raj Engineering Division,
Bengaluru Rural District,
Ananda Rao Circle,
Bengaluru-01.

(Def.No.1,2& 6: Exparte)
(Def.No.3 to 5 by Sri.D.S.M., Advocate)
(Def.No.7 by Sri.M.S.D., Advocate)

Date of institution of suit :	17-12-2008		
Nature of suit :	Declaration & injunction		
Date of recording evidence :	04-09-2023		
Date of closing evidence :	05-03-2024		
Date of Judgment Pronounced :	24-04-2025		
Total Duration :	Years	Months	Days
	16	04	07

(Arun Kumar.G)
Senior Civil Judge & JMFC,
Hosakote.

J U D G M E N T

This suit is filed by the plaintiff against the defendants for declaration, declaring that he is the absolute owner in possession of the suit schedule property and direct the defendants to hand over the possession of the suit schedule property to the plaintiff and such other reliefs.

2. The brief facts of the plaintiff's case is as hereunder:

The plaintiff is the absolute owner in possession and enjoyment of the suit schedule property having acquired the same through inheritance. Originally the suit schedule property was granted to his father by name Dyavanna in draksath and after his death, the plaintiff is in possession and enjoyment of the said property as an absolute owner without any disturbance from anybody. The plaintiff has grown around 8000 eucalyptus trees in the suit schedule property.

When such being the case, the defendants without any rule of law trying to make a road on the northern side of the suit schedule property without any legal basis or any approval. Further extent of land required for the road is also not known. As per the provisions of the Land Acquisition Act, the Revenue

Department or PWD has not issued any notification in respect of the suit land or any other adjacent lands. When such being the fact, the defendant No.1 to 5 without any right or interest over the suit property are trying to make a road in the northern side. Hence, plaintiff lodged complaint to the jurisdictional police and also filed this suit.

3. After service of suit summons, the defendants No.1, 2 and 6 have not appeared before the court, hence they are placed *exparte*. The defendant No.3 to 5 and 7 were appeared before the court and filed written statement by denying the averments made by the plaintiff and further contended that the plaintiff has shown the excess land and there are three side government road and the plaintiff has illegally encroaching upon the said road and tried to obstruct the public and not only defendants but also general public at large. Further, the plaintiff is not the owner of the land bearing Sy.No.18/7, measuring 4 acres and as such the plaintiff has illegally putting up structure over the suit schedule property and these defendants have not obstructed the alleged possession of the said property.

Further, there is a regular appeal is pending before the Assistant Commissioner, Chikkaballapura and the plaintiff has not made necessary parties, as such the suit is also hit by misjoinder and nonjoinder of necessary parties. Hence, plaintiff has no right, title and interest over the government road on three sides and as such the plaintiff is not at all entitled for any reliefs. Hence, the suit is liable to be dismissed with costs.

4. On the above pleadings of the parties, this court has framed the following:

ISSUES

1. Whether the plaintiff proves that he is the absolute owner in possession of suit schedule property ?
2. Whether the plaintiff proves the interference by the defendants with his possession and enjoyment of the suit schedule property ?
3. Whether the defendants prove that the boundary and the extent furnished by the plaintiff in respect of the suit schedule property is not correct ?
4. Whether the defendants prove that the plaintiff is illegally putting up construction over the suit schedule property by encroaching upon the public road?
5. Whether the plaintiff is entitled for the suit reliefs as sought for ?

6. What order or decree ?

5. In order to prove the suit claim, the plaintiff 1(e) examined himself as P.W-1 and two witnesses were examined as P.W-2 and 3 and got marked 24 documents as Ex.P-1 to P-24. The defendants in order to prove their defense, they did not step into the witness box nor produced any documents on their behalf.

6. Heard arguments.

7. My findings to the above issues are as under;

Issue No.1 : In the Negative,

Issue No.2 : In the Negative,

Issue No.3 : In the Negative,

Issue No.4 : In the Negative,

Issue No.5 : In the Negative,

Issue No.6 : As per final order
for the following;

REASONS

8. **Issue No.1 and 2:-** Both the issues are inter connected to each other. Hence, in order to avoid repetition of facts the same are taken together for common discussion.

The plaintiff has filed the above suit against the defendants for the relief of declaration, permanent injunction and for possession of the suit schedule property and to restrain the defendants from forming the road. During pendency of the suit, the plaintiff died and his L.R's were brought on record.

9. The plaintiff No.1(e) by name Narayanagowda examined himself as P.W-1 and got marked documents as Ex.P-1 to 24. Ex.P-1 to 4 are the RTC extracts, Ex.P-5 is the tax paid receipt, Ex.P-6 is the sketch, Ex.P-7 is the copy of order of the Special Deputy Commissioner, Ex.P-8 to 11 are the RTC and mutation extracts, Ex.P-12 is the sketch, Ex.P-13 is the copy of complaint, Ex.P-14 and 15 are the endorsements and Ex.P-16 to 24 are the photos and C.D.

10. The witnesses by name H.B.Devaraju and B.Gopalaiah were examined as P.W-2 and 3 who depose by filing examination in chief affidavit about the grant of suit schedule property in favour of father of the plaintiff by name Dyavanna and possession of the plaintiff and also the interference alleged to be caused by the defendants.

11. Though the defendants appeared and filed written statement by denying the suit claim, they did not cross examined the P.W-1 to 3 nor step into the witness box to prove their defense.

12. Here in this case the plaintiff is claiming the relief of declaration in respect of the suit schedule property bearing Sy.No.18/7 an extent of 4 acres, situated at E.Hosahalli Village, Sulibele Hobli, Hosakote Taluk. It is the contention of the plaintiff that the suit schedule property was grated in favour of his father by name Dyavanna under darkasthu by the concerned government. After the death of his father, the plaintiff being his son inherited the same and he continued in possession and enjoyment over the suit property. Further, he has also grown around 8000 eucalyptus trees and also cultivating the same by cut and removing the said standing trees.

13. The defendants though they are not having any manner of right, title and interest over the suit schedule property they are trying to form road towards northern side of the suit

schedule property. Further, contended that the said property was not acquired by the government or panchayath for formation of the said road.

14. Here in this case, the plaintiff is claiming the relief of declaration in respect of the suit schedule property. Therefore, it is the burden on the plaintiff to prove his title over the suit schedule property by proving that the said property was granted in favour of his father by name Dyavanna.

15. In order to prove the same, the P.W-1 has produced Ex.P-7 the copy of proceedings of Darkasthu Committee for confirmation of the possession of the said Dyavanna for an extent of 4 acres in Sy.No.18/7. By virtue of the said order, katha was mutated in the name of plaintiff under IHC.No.4/1993-94 as powthi varasu. Now, as per Ex.P-10 katha is standing in the name of Narayanagowda who is the son of the plaintiff by name Munisonnappa.

16. The plaintiff in order to prove his title, except Ex.P-7 he has not produced any title documents to prove that the said

property was granted after the proceedings of the Land Grant Committee in favour of Dyavanna. Therefore, it is relevant to refer the ratio laid down by the Hon'ble Apex Court reported in **(2014) 2 SCC 269** between **Union Bank of India & others V/s Vasavi Co-Operative Housing Society Ltd.**, wherein the Hon'ble Apex Court held that: “***the entries in revenue records do not confirm any title***”.

Here in this case also except the revenue records, the plaintiff has not produced any material documents. Though, the defendants have not denied the grant made in favour of Dyavanna through their written statement, it is the burden on the plaintiff to prove his title by producing title deeds.

17. Further, the plaintiff is claiming the relief of possession over the suit schedule property and also stated that the defendants by using JCB and rowdy elements have formed illegal road by encroaching the suit schedule property. In order to prove the same, the plaintiffs except the photographs as Ex.P-16 to 24 have not produced any documents.

18. Further, the P.W-1 has produced the self explanatory rough sketch which is not authenticated by any authority as per Ex.P-12, which shows about the existence of road to an extent of 28 guntas as per orders passed in LNDSR II 115/62-63 dated 6-4-1974. But, the said sketch was not approved by any authority. On perusal Ex.P-12 it shows that the plaintiff is in possession over an extent of 5 acres 32 guntas but, he is claiming the relief only with respect to an extent of 4 acres and he has also produced the revenue records to prove the same.

19. The defendants through their written statement have denied the boundary of the suit schedule property and also taken a specific contention that the plaintiff himself has encroached the public road. In order to prove the same, the defendants did not step into the witness box nor produced any documents on their behalf.

20. As per Ex.P-12 clearly goes to show that the plaintiff is claiming possession over the property bearing Sy.No.18/7 as he is claiming in the present suit. In order to prove that the defendants have formed road by encroaching the suit schedule

property and they are trying to dispossess the plaintiff from the said property, except his oral allegations and the evidence of P.W-2 and 3 he has not produced any material documents and also not obtained any report from the survey authority or from any experts. Therefore, the plaintiff has failed to prove his title over the suit schedule property and also the alleged encroachment caused by the defendants. Hence, Issue No.1 and 2 are answered in “**Negative**”.

21. **Issue No.3 and 4:-** Both the issues are inter connected to each other. Hence, in order to avoid repetition of facts the same are taken together for common discussion.

The defendants through their written statement have taken a specific contention that the boundary and the extent furnished by the plaintiff in respect of the suit schedule property is not correct and the plaintiff by encroaching the public road has illegally put up construction over the suit schedule property. In order to prove the same, the defendants did not step into the witness box and not cross examine the P.W-1 nor produced any oral and documentary evidence.

22. As per Ex.P-12 the sketch produced by the P.W-1 himself clearly goes to show that he is in possession to an extent of 5 acre 32 guntas though the government has granted only an extent of 4 acres in favour of his father by name Dyavanna. In order to prove the title over the said property, the P.W-1 has not produced any material documents. Furthermore, the said Ex.P-12 is also not authenticated by the concerned department. Further, in order to prove the boundary mentioned in the plaint, the P.W-1 himself has failed to prove the same by producing material documents. Hence, Issue No.3 and 4 are answered in “**Negative**”.

23. **Issue No.5:-** The plaintiff has filed the above suit against the defendants for the relief of declaration and permanent injunction and also possession of the suit schedule property. In order to prove the title as discussed earlier, except Ex.P-7 the P.W-1 has not produced any material documents. Further, as per ratio laid down in the above referred judgment, the revenue documents and the mutation does not confer any title over the immovable property.

24. Furthermore, the plaintiff except the photographs and the alleged sketch as per Ex.P-12 he has not produced any documents to show that the defendants have tried to dispossess the plaintiff and formation of road by encroaching the suit schedule property. As per Ex.P-12 the plaintiff is in possession to an extent of 5 acres 32 guntas for which he has not produced any documents. Further, he has also not proved the alleged interference caused by the defendants and also not proved the boundary as the defendants denied through their written statement. Hence, plaintiff is not entitled for any relief as claimed. Therefore, Issue No.5 is answered “**Negative**”.

25. **Issue No.6:-** In view of discussions made above, I proceed to pass the following:-

ORDER

The suit filed by the plaintiff is hereby
dismissed with costs.

Draw decree accordingly.

(Dictated to the Stenographer, corrected by me and then pronounced in the open court on this the 24th day of April, 2025)

(Arun Kumar.G)
Senior Civil Judge & JMFC,
Hosakote.

ANNEXURE**List of witnesses examined for the plaintiff/s:**

P.W-1 : Sri.Narayanagowda
P.W-2 : Sri.H.B.Devaraju
P.W-3 : Sri.B.Gopalaiah

List of documents marked for the plaintiff/s:

Ex.P-1 to 4 : RTC extracts
Ex.P-5 : Tax paid receipt
Ex.P-6 : Sketch
Ex.P-7 : Copy of order of the Special Deputy Commissioner
Ex.P-8 to 11 : RTC and mutation extracts
Ex.P-12 : Sketch
Ex.P-13 : Copy of complaint
Ex.P-14 & 15 : Endorsements
Ex.P-16 to 24 : Photos and C.D.

List of witnesses examined for the defendant/s:

- NIL -

List of documents marked for the defendant/s :

- NIL -

Senior Civil Judge & JMFC,
Hosakote.

