

KAMD200001782008



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL  
JUDGE AND J.M.F.C., KRISHNARAJAPETE.**

**:PRESENT:**

**SRI. DEVARAJU.H.R. BA., LLB.,**  
ADDL., SENIOR CIVIL JUDGE AND JMFC,  
K.R.PETE.

**DATED THIS THE 2<sup>ND</sup> DAY OF SEPTEMBER-2025****R.A. No.24/2008**

Appellants/s : Kullegowda  
D /o Late Thimmegowda,  
(Dead by his Lrs)

1(a). Kubera  
S/o Late Kullegowda,  
aged about 53 years,

1(b) Sakamma  
W/o Late Kullegowda  
aged about 75 years,

Both are R/o  
Hemmanahalli village,  
Kasaba hobli,  
K.R.Pete taluk,  
Mandya district.

1(c) Jayamma  
W/o Chandregowda  
aged about 65 years,  
R/o Agraharabachahalli village,  
Kasaba hobli,  
K.R.Pete taluk,  
Mandya district.

1(d) Yashodhamma  
W/o Kalegowda  
aged about 60 years,  
R/o Jakkanahalli village,  
Sheelanere hobli,  
K.R.Pete taluk,  
Mandya district.

1(e).Radha  
W/o Shivalingegowda,  
aged about 50 years,  
R/o Chowdasamudra village,  
Sheelanere hobli,  
K.R.Pete taluk,  
Mandya district.

**(By.Sri.K.N.N., Adv)**

**V/s**

Opponent/s : 1. Thimamma  
W/o Late Thimmegowda  
aged about 75 years,  
  
2. Sannathayamma  
W/o Late Chikkegowda,  
aged about 58 years,  
  
3. Geetha  
D/o Late Chikkegowda,  
aged about 40 years,

4. Suregowda  
S/o Late Thimmegowda,  
aged about 60 years,  
5. Girigowda  
S/o Late Thimmegowda  
aged about 55 years,

6. Thimamma  
D/o Late Thimmegowda,  
aged about 50 years,

7. Nagamma  
D/o Late Thimmegowda  
aged about 53 years,

8. Sakamma  
W/o Late Nanjegowda,  
aged about 80 years,

9. Smt.Jayamma  
W/o Ramegowda  
aged about 50 years,

10. Sri.Sathisha  
S/o Annegowda  
aged about 38 years,

Opponent/s :  
(Defendant No.1, 2. 2(e)  
D-3(a) to (d)  
in OS 240/1996)

11. Smt.Lakshamma  
W/o Late Amasegowda  
aged about 60 years,

2. Amasegowda  
S/o Late Nagegowda  
(dead by his Lrs)

12(a) Ramkrishnegowda  
S/o Late Amasegowda  
aged about 45 years,

12(b) Devaraju  
S/o Late Amasegowda  
aged about 42 years,

Both are R/at  
Hemmanahalli village,  
Kasaba hobli,  
K.R.Pete taluk,  
Mandya district.

12(c) Nanjamma  
W/o Shivaramegowda  
aged about 45 years,  
R/o Rajaghatta village,  
Sheelanere hobli,  
K.R.Pete taluk,  
Mandya district.

12(d) Dhanalakshmi  
W/o Ramesha  
aged about 43 years,  
R/o Maduvinakodi village,  
Bookanakere hobli,  
K.R.Pete taluk,  
Mandya district.

12(e) Rathnamma  
W/o Thammaiah  
(dead by his Lrs)

12(e) (1) Thammaiah  
S/o Lakkegowda  
aged about 40 years,

12(e)(2) Krishna  
S/o Thammaiah  
aged about 12 years,

Represented by its  
Natural guardian father's  
namely Thammaiah

Both are R/at  
Valageremenasa village,  
Kasaba holbi,  
K.R.Pete taluk,  
Mandya district.

13. Janakamma  
W/o Late Swamigowda  
aged about 44 years,

14. Puttaraju  
S/o Late Swamigowda  
aged about 28 years,

15. Madegowda  
S/o Late Swamigowda  
aged about 26 years,

16. Teju  
S/o Late Swamigowda  
aged about 24 years,

R-13 to 15 are R/at  
Hemmanahalli village,  
Kasaba hobli,  
K.R.Pete taluk,  
Mandya district.

(By. Sri.B.C.D., for R-1  
Sri. T.L adv for R-No.2 to 10 &  
12(a) and (b),  
sri. MRP Adv for R-11  
and R-14 to 16 are absent).

|                                   |                                                                                                                                                                                 |
|-----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Date of institution of the Appeal | 29.03.2022                                                                                                                                                                      |
| Nature of the suit/Appeal         | Prays to call for the records in O.S. No. 249/2013 (DD.14.01.2022) from the Hon'ble Addl.Civil Judge and JMFC., K.R.Pete and set aside the Judgment and decree dated 14.01.2022 |
| Date of the nature of the decree  | Judgment and decree dated 14.01.2002 passed by Hon'ble Addl.Civil Judge and JMFC., K.R.Pete, in O.S. No. 249/2013 for the relief of Declaration and injunction.                 |
| Date of judgment                  | 02.09.2025                                                                                                                                                                      |

**(DEVARAJU H.R.)**ADDL., Sr.C.J & J.M.F.C.  
K.R.Pete.

\* \* \* \* \*

**:J U D G M E N T:**

1. The Appellants preferred this Regular Appeal U/order 41 Rule 1 of CPC challenging the judgment and decree dated 27.03.2008 passed by the Hon'ble Civil Judge and JMFC, K.R.Pete in O.S. No. 240/1996.

2. The present appellants were the legal heirs of deceased plaintiff No.3 namely Kullegowda and respondent No.1 to 7 were the legal heirs of plaintiff No.1, respondent No. 8 to 10 were the plaintiff No. 4 to 6 before the trial court, respondent No. 11 to 16 were the defendant No. 1 to 3 and their legal heirs

before the trial court. For the sake of convenience the parties to the proceedings will be referred to as per their rankings before the Hon'ble Trial court.

**3. The brief facts of the appeal as follows:-** The plaintiffs have filed suit for declaration of their absolute ownership over the suit schedule property and consequential relief of Permanent Injunction by confirming their possession over the suit schedule property against the defendants their agents, servants, or anybody claiming through them from interfering with the possession and enjoyment of the plaintiffs over the suit schedule property and other reliefs court deems fit to grant under the facts and circumstances of the case.

**4.** It is the case of the plaintiffs that, one Thimmarayigowda @ Suregowda had three sons namely Thimmegowda, Girigowda and Marchigowda. They are all died, the brothers were divided long back. The plaintiffs are the sons of Late Thimmegowda. Girigowda died living behind 2 wives namely Thimamma and Honnamma as his legal heirs his wives are also died. The Marchigowda died living behind his daughter who is the 1<sup>st</sup> defendant herein.

**5.** The plaintiffs further submit that deceased Girigowda had property measuring 3 acre 29 guntas of dry land in Sy. No. 15 of Naganahalli village, Kasaba hobli, K.R.Pete taluk out of this he had sold 2 acre 9 guntas of land in registered sale deed

dated 02.02.1945 to the father of the plaintiffs and delivered the possession. Again the said Girigowda and his wives namely Honamma and Thimmamma sold out the remaining 30 guntas to the 3<sup>rd</sup> plaintiff in registered sale deed dated 23.12.1965 and delivered the possession also. In the sale deed boundaries and extent are correctly mentioned. However, survey number is wrongly mentioned as 18 instead of 15/2. This mistake came to the knowledge of the plaintiff on 04.05.1984 when surveyor measured the land on the application of the defendants. The plaintiffs have approached to Smt. Honamma for rectification of said mistake, Sri.Girigowda and his 2<sup>nd</sup> wife Thimmamma were died, the Honamma executed a registered rectification deed on 07.12.1984 by confirming possession of the plaintiffs over the property bearing Sy. No. 15/2. Thus the plaintiffs became the owners of 3 acres 29 guntas of land in Sy. No. 15 and are in possession and enjoyment of the same.

**6.** Further the plaintiff further submitted that the survey authority have sub divided the Sy. No. 15 X 3 phodes, phodi No. 1 measures 2 acres 15 guntas and phod No. 2 measures 1 acre 14 guntas and phod No. 3 measures 22 guntas. This is not correct and it seems that this division was effected relying on the recitals in the registered sale deed dated 26.05.1966, executed by Late Marchigowda in favour of defendants. The late Marchigowda was in possession of the property as absolute owner in Sy. No. 15 as such he could not have alienated the

same to the defendants. The sale deed dated 26.05.1966 consists 14 items of the property and each item boundaries are separately given. Even different phodes of same survey number boundaries separately given. Item No.12 is described as bounded on East by Land of Thimmegowda @ Doddamma in Y. No. 18, West by Land of Ameer Sab in Sy. No. 24, South by land of Thimmegowda Sy. No. 15 and North by Thimmegowda who is the father of the plaintiff in Sy. No. 17/4 and land situated within the above boundaries in Sy. No. 17/3 measuring 1 acre 13 guntas only. But in the sale deed Sy. No. 15/2 1 acre 13 guntas is added though this land does not situated within the above boundaries.

7. The plaintiff further submits that the revenue authorities have shown Sy. No. 15/1 measuring 11 ares to the 2<sup>nd</sup> plaintiff 42 ares to the 2<sup>nd</sup> plaintiff, 43 ares to the 3<sup>rd</sup> plaintiff and 52 ares in sy. No.15/2 to the name of defendants. But the defendants are not at all in possession of any land in Sy. No. 15 or 15/2. The 1<sup>st</sup> plaintiff is in possession of the property measuring 25 ares of land in Sy. No. 15, 2<sup>nd</sup> plaintiff is in possession of the property measuring 53 ares the 3<sup>rd</sup> plaintiff is in possession of 64 ares of land in Sy. No. 15. This fact confirming by the surveyor who made the measurement of the property. The defendants have not taken any legal action to get possession from the plaintiffs so far which shows that they have no right over the land which is in possession of the plaintiffs.

The plaintiffs after coming to know the entries made in the name of defendants they have applied Tahasildar K.R.Pete to correct the RTC entries on 29.10.1984 but the Tahasildar has issued an endorsement by stating to approach the Assistant Commissioner. Then the plaintiffs have filed appeal to the court of Assistant Commissioner, Pandavaura in R.Mis No. 19/1994/95 which was dismissed on 16.01.1996. Hence, they have filed present suit.

**8.** Cause of action for the suit arose at Natanahalli village, Kasaba hobli, K.R.Pete taluk, within the jurisdiction of this court. Under these backgrounds, plaintiffs sought for decreed the suit.

**9.** After registration of the suit, suit summonses were issued against the defendants. The defendant No.1 and 2 have put their appearance through their advocate Sri. MRP, defendant No. 2 put her appearance through her advocate Sri. KRI.

**10.** The defendant No.1 has filed his detailed written statement by denied the Genealogy shown in the 1<sup>st</sup> para of the plaint as incorrect. After the plaintiff namely Sri,Thimmegowda left 2 more daughters namely Smt. Javaramma and Smt.Sakamma, who are the necessary and proper parties to the suit. 2<sup>nd</sup> defendant died long back, his legal heirs has not been brought on record. Claim of the plaintiff against his legal heirs dismissed by the Hon'ble court on 17.01.2003. Hence, the suit

against these defendants is not maintainable and it is liable to be dismissed in limine.

**11.** Further contended that, Late Thimmarayigowda had 2 sons as shown in the genealogical tree. Further defendant No. 1 has denied the possession of the plaintiff over the suit schedule property, defendant has colluded with the survey department have denied the land in Sy. No. 15 into 3 phodes. Further he admits that Sri.Marchigowda had executed sale deed in favour of defendant No.2 on 26.05.1996 under sale deed. Sri.Marchigowda sold out 54 guntas of land situated in Sy. No. 15/2 of Naganahalli village and put them in possession of the said land sold in said sale deed.

**12.** Further he admits that division of the Sy. No. 15. However, she contends that the extents of the land shown in the said para No.4 of the plaint alleged to have been in possession of the plaintiff are false. Further admits the litigation between the Tahasildar, K.R.Pete and Assistant Commissioner, Pandavapura, the Assistant Commissioner, Pandavapura has dismissed the appeal on 22.01.1996 on the grounds that Sy. No. 15/2 was in the name of Sri.Marchigowda in the preliminary record of Tahasildar office which is ancient document. The plaintiff have no manner of right to challenge the same. Defendants have been possession as owners since date of possession and enjoyment of the same under the sale

deed. The plaintiffs are neither the owners nor in possessor of the same at any time much less on the date of the this suit.

**13.** Further defendants have filed additional written statement by contended that suit filed by the plaintiff is not maintainable all the legal heirs of deceased plaintiffs are not arrayed as parties. By contending so prays for dismiss the suit.

**14.** The court guardian of defendant No. 2(e) (d) has filed written statement and contended that, what ever the legitimate share is entitled for in the ancestral properties should be safe guarded in the interest of his future life, which will enable this to lead life in future after attain majority. Therefore he prays for passed suitable order by safeguard in the minors interest.

**15.** Upon considering the rival contentions raised by the parties, Hon'ble trial court has framed the following issues;

### **ISSUES**

**1. Whether the plaintiffs prove that their father acquired suit schedule property under sale deed dated 03.02.1945 and 23.12.1965 as contended in para No. 2 of the plaint?**

**2. Whether the plaintiffs prove the execution of rectification deed as contended in para No. 2 of the plaint?**

**3. Whether the plaintiffs proves that they were in possession and enjoyment**

**of the suit schedule property as on the date of this suit?**

**4. Whether the plaintiffs proves the alleged interference and denial of their title by the defendants?**

**5. Whether the plaintiffs prove that they are entitled for the relief of declaration as sought for?**

**6. Whether the plaintiffs prove that they are entitled for the relief of permanent injunction as sought for?**

**7. What order or decree?**

**ADDITIONAL ISSUES**

**1. Whether the plaintiffs prove that their vendor Late Girigowda and his two wives had any legal right to sell the suit schedule property to plaintiffs' father and also to 3<sup>rd</sup> defendant?**

**2. Whether the plaintiffs prove that they have acquired the legal right over suit property under the sale deeds as averred in the plaint?**

**16.** In order to prove the above issues before the trial court plaintiff No.1 has examined herself as PW-1 and furnished 16

documents as per Ex.P1 to Ex.P16 and has examined 2 more witnesses namely Sri.Ramegowda and Sri.Borigiri Papegowda as PW-2 and PW-3 and closed their side evidence. On the other hand defendant No. 1 has examined the trial court as DW-1 and has examined one witness namely Boregowda as DW-2 and furnished 12 documents as per Ex.D1 to Ex.D12.

**17.** After appreciating both oral and documentary evidence made available on record by the parties and after hearing the both the parties the Issue No. 1 to 4 in the **Partly Affirmative**, Issue No. 5 & 6 as per the relief in respect to Sy. No. 15/1 is concerned the claim of the plaintiffs is kept open, as per the claim of the plaintiffs in respect of the land bearing Sy. No. 15/2 is concerned, hence answered in the **Negative** and additional issue No. 1 and 2 in the **partly affirmative** and partly decreed the suit. It is judgment and decree that have been impugned in the appeal on the following grounds.

#### **GROUND**

1. The Hon'ble trial court has passed the judgment and decree against the settled principles of law.
2. The trial court has not considered the documents and evidence given by the defendants and not tallied the sale deeds produced by the parties.

3. The trial court has not considered the arguments advanced by the parties and evidence given by the witnesses.

4. Among on other formal grounds, the appellant have prayed for decreed the suit.

**18.** After registration of the appeal, notice has been issued to the respondents. Respondent No.2 to 10 and Respondent No. 12(a) and (b) have put their appearance through their advocate Sri. T.L, respondent No. 14 to 16 are absent, respondent No. 11 has his appearance through his advocate Sri. MRP.

**19.** The learned counsel for the appellant has filed IA No.2 and 6 U/order 41 Rule 27 of CPC and prays for permission to file additional document and to lead evidence.

**20.** The Legal heirs of appellant in his affidavits has stated that he has filed appeal by challenging the judgment and decree passed in O.S. No. 245/1996, due to his personal in convenience he could not able to file some documents before the trial court. Hence, he has filed present application in order to produce the documents. If these applications are not allowed much hardship causes to him.

**21.** The legal heir of plaintiff namely Sri.Kubera in his affidavits annexed to these applications has stated that during pending of the appeal his father was died and his father had furnished documents. His father had not furnished survey settlement, land records as said documents computerized. Now

said documents available for him. Hence, in order to establish his ownership production of said documents are materials documents. Hence, he has filed present application.

**22.** On the other hand respondent has filed objection and contended that, application filed by the plaintiff is not maintainable either in law or facts. The application sought to be produced as an additional evidence is no where helpful to the appellant. The appellant is not diligent in producing the documents before the trial court. Absolutely there is no merits on filing application. Hence, he prays for dismiss the application.

**23.** On perusal of the records it appears that plaintiff has filed IA No. VII U/o 26 Rule 9 of CPC for seeking appointment of Taluk Surveyor as court commissioner in order to measure the suit schedule properties and to identified the properties of parties and submits his report. The appellant in his affidavit annexed to this application has stated that his father had filed present suit for declaration and permanent injunction. During the pending of the suit his father was died the properties bearing Sy. No. 15/1 and 15/2 belongs to the plaintiff, out of which on 02.02.1945 his grand father Sri.Thimmegowda had purchased property in Sy. No. 15/1 measuring 2 acre 39 guntas from brother of Sri.Girigowda and Smt.Thimamma and Smt.Honamma, again on 23.12.1965 the plaintiff had purchased 30 guntas of property from Smt.Thimamma and

Smt.Honamma in Sy. No. 15/2. Ever since date of registration of the sale deed initially his grand father. Thereafter his father and plaintiff were in possession of the suit schedule property. However, his grand father Sri.Kullegowda had purchased property measuring 13 guntas in Sy. No. 15/2, in the said sale deed survey number wrongly entered as 18. Said sale deed has been rectified on 07.12.1984, his grand father Sri.Thimmegowda and his brother Sri.Marchigowda had executed nominal sale deed on 26.05.1966 in said sale deed property towards southern side shows as his brother Sri.Thimmegowda's land i.e., Sy. No. 15/1 and 15/2. the defendants their written statement have admitted this fact. However, taking undue advantage as wrongly mentioned survey number in sale deeds, the defendants are trying to interfere with their possession. Hence, measurement of the properties is necessary in order to dissolve the dispute between the parties and it is necessary for the court to pass the decree effectively. If this application is allowed no hardship causes to the defendants. Hence, he prays for allow the application.

**24.** Per contra, respondents have filed their detailed objection and contended that, application filed by the plaintiff is not maintainable and liable to be 1. Already there is a sketch prepared by the survey authority which is marked at Ex.D-10 which shows lawful possession of the individual parties. Hence, application filed by the applicant is not maintainable. The trial

court has clearly held that plaintiff are the owners of the land in Sy. No. 15/1 and 15/2 right is kept open to file a separate suit so far as 15/2 is concerned respondents are owners and they are in lawful possession over the property measuring 1 acre 13 guntas and said suit for plaintiff with respect to 15/2 is dismissed. The appellant knowing the said facts that they filed a present application with an intention to drag the proceedings and they have filed present application without any grounds. Hence, they pray for dismiss the IA No.VII with cost.

**25.** Heard both sides perused the available materials on record, the points for arises for my consideration are as follows:

**POINTS**

- 1. Whether the plaintiff proves that he is absolute owner of the property bearing Sy. No. 15/2 measuring 1 acre 13 guntas and Sy. No. 15/1 measuring 2 acre 15 guntas of Naganahalli village, Kasaba hobli, K.R.Pete taluk?**
- 2. Whether the plaintiff proves the alleged interference from the defendants?**
- 3. Whether the appellant shows that production of documents is required to enable the court to pronounce the judgment or for any other substantial cause?**

**4. Whether the appellant show that appointment of Court commissioner is required or proper for the purpose of local investigation to elucidating and to identify the actual features of the suit schedule property ?**

**5. Whether the findings recorded by the Hon'ble Trial Court on various issues are correct?**

**6. Whether the judgment of the Hon'ble Trial Court does call for interference by this court?**

**7. What order or decree?**

**26.** Now my answers to above points are as Under:

Point Nos.1. 2, 4, 5 & 6: **Does not survive  
for Consideration of this juncture,**

Point No.3 : In the **Affirmative,**

Point No.7 : As per the final  
order for the following:

### **REASONS**

**27. Point No.3:-** It is the case of the plaintiff that, he is the absolute owner of the suit schedule property. One Thimmarayigowda @ Surigowda had 3 sons, namely Thimmegowda, Girigowda and Marchigowda. All the said persons were dead. Late Girigowda owned 3 acre 29 of dry land

in Sy. No. 15 of Naganahalli village, Kasaba hobli, K.R.Pete taluk. Out of which he had sold out the 2 acre 39 guntas of land through registered sale deed dated 02.02.1945 to the father of the plaintiff and he delivered the possession also. Again Girigowda and his wives Thimmamma and Honamma sold out the remaining 30 guntas of land to the 3<sup>rd</sup> plaintiff namely Kullegowda through registered sale deed dated 23.12.1965 and delivered the possession also. But in said sale deed survey number wrongly mentioned as 18 instead of 15/2, he came to know the said fact on 04.05.1984, when surveyor had conducted the measurement of the land based on the application given by the defendants. Thereafter he approached the Honamma for rectification of the mistake. Accordingly, she had executed the registered rectification deed on 07.12.1984. Hence, he became owner of the property bearing Sy. No. 15/2 measuring 3 acre 29 guntas.

**28.** I gone through the trial court records, the plaintiff had not furnished survey settlement in order to establish measurement of the property. Now he intends to produce the certified copy of the tippani in order to establish measurement of the property. It is last fact finding court, if court provide an opportunity to the appellant to produce the said document. It no where cause hardship to the respondent. Further appellants has obtained said document through computer on 18.10.2024 during pending of the appeal.

**29.** On perusal of the trial court judgment it appears that the trial court has dismissed the suit of the plaintiff by holding that plaintiff fails to establish his ownership as the defendants have disputed the measurement of the property. Hence, on perusal of the proposed document it appears that the said document is important on main issues and it is necessary to remove doubt for pronouncing the judgment. Such being the case no fault could be found on the part of the appellant in producing the said document before the appeal stage, if the said application is allowed no legal injury or great hardship would be caused to the respondents. The said document having binding upon the outcome result of this case. Thus for these reasons, this court is of the considered opinion that the application filed by the appellant is deserves to be allowed. Accordingly, I hold Point No. 3 is answered in the **Affirmative**.

**30. Point No.1, 2 & 4 & 5:** Now as this court has held that the appellant has made out sufficient grounds to allow the application filed by her U/order 41 Rule 27 of CPC, this court is of considered opinion that the finding as to the present point for consideration could be deferred till further evidence could be recorded in the matter. As such these points does survive for consideration at this stage.

**31. Point No. 6:** In view of my findings to above points I pass the following:-

**ORDER**

**The IA No.2 and 6 filed by the Appellant Under Order 41 Rule 27 of CPC are hereby allowed on cost of Rs.1000/- each.**

**The documents produced by the plaintiffs are taken on record.**

**The judgment to be passed in the matter is deferred.**

**Matter is posted for recording of additional evidence on behalf of the appellant.**

**For Additional Evidence by:  
10.09.2025.**

(This judgment is dictated to the stenographer directly computerized by her, corrected and then pronounced by me in the open court on 02<sup>nd</sup> day of September-2025)

**(DEVARAJU H.R.)**  
Addl.,Sr.CJ & J.M.F.C.,  
K.R.Pete.

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