

KAMD400001632023



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC.,
MALAVALLI.**

Present : Sri. Mahendra. M., B.A., L.L.B.,
Senior Civil Judge and JMFC,
Malavalli.

Dated : This 2nd day of April - 2026

REGULAR APPEAL No.14 of 2023

(O.S.No:130/2012 before 1st Addl. Civil Judge & JMFC,
Malavalli)

Appellant/ Defendant:	Sri. Basavaraju S/o Basavegowda Aged about 48 years, R/o Kalyanikoppalu Village, B.G.Pura Hobli, Malavalli Taluk, Mandya District.
	(Reptd. by Sri. H.P.R., - Advocate)
	Vs.
Respondent/ Plaintiff:	Sri. Chikkannachari S/o Late Venkatachari Aged about 62 years, R/o Kalyanikoppalu Village, B.G.Pura Hobli, Malavalli Taluk, Mandya District.

	Now R/o Kagepura Building, Kirugavalu Hobli, Malavalli Taluk, Mandya District.
	(Reptd. by Sri. V.L.N., - Advocate)
DATE OF PRESENTATION OF THE REGULAR APPEAL :	28.02.2023
NATURE OF APPEAL :	Against the Judgment and Decree passed in Original Suit No.130/2012 dated 03.01.2023 by the learned 1st Addl. Civil Judge & JMFC, Malavalli.
NATURE OF SUIT BEFORE TRIAL COURT :	Permanent Injunction
JUDGMENT PRONOUNCED :	02.04.2026
DURATION OF REGULAR APPEAL:	Year/s Month/s Day/s 03 01 05

**(Sri. Mahendra M.)
Senior Civil Judge & JMFC.,
Malavalli.**

JUDGMENT

This Regular Appeal is filed by the Appellant/Defendant being aggrieved by decreed the suit vide its Judgment and Decree dated: 03.01.2023 in OS No:130/2012 passed by the Learned 1st Addl Civil Judge & JMFC. Malavalli.

2. For the sake of convenience, the parties to the Appeal are referred to in the same rank as before the Trial court in OS No:130/2012.

3. **The averments of the Plaint in brief are as follows:**

The plaintiff is in possession and enjoyment of the property bearing Sy.No.100/2 has been acquired by his ancestors and out of that, the father of the plaintiff namely Venkatachari acquired the same by his father and the father of Venkatachari was died about 30 years back left behind the plaintiff and his estate. The plaintiff has been in possession and enjoyment of the said property as Hiduvali land situated towards the western side of the suit schedule property bearing Sy.No.95 of Government land at Kalyanikoppalu Village. The plaintiff and his ancestors are in possession and enjoyment of the same more than 50 years by unauthorized cultivating along with the Hiduvali property situated including western side of the suit schedule property by growing dry crops like ragi and others by investing merely Rs.10,000/- for leveling the suit schedule property.

4. The plaintiff further submitted that, he has made an application before the Land Grant Committee through Form No.53 and the revenue mahazar made by the Taluk Tahsildar and also Revenue Inspector of B.G.Pura Hobli. They are visited the suit schedule property and measure the same and identified and fixed the boundaries through the Survey Department and prepared the sketch as per enjoyment of the suit schedule property. Except the plaintiff, no one has no right, title, interest or possession over the suit schedule property at any point of time. The defendant is the stranger to suit schedule property and the defendant has no Hiduvali property and possessed by himself at any point of time in either side of the suit schedule property. The defendant has interfered with possession of the plaintiff over the suit schedule property. **Hence, the plaintiff has filed this suit against the defendant for the relief of permanent injunction.**

5. After service of suit summons, the defendant appeared before the Trial court through his counsel **and filed his written statement in brief as follows:-**

The defendant has specifically denied the plaintiff averments. The defendant further contended that, the boundaries furnished by the plaintiff is incorrect and the description of the suit is incorrect. One Basamma W/o Vakrahalli Karigowda of Kalyanikoppalu Village is the grandmother of defendant. The said Basamma had 2 sons namely Basavaiah and Siddaiah. The defendant is the son of said Basavaiah. One Late Ningegowda S/o Vakrahalli Ningegowda during his life time executed the registered gift deed dated 30.11.1961 in respect of suit schedule property along with other properties in favour of Basamma also on behalf of the her children Basavaiah and Siddaiah. They are put in possession and enjoyment of the same. The said Basavaiah is none other than the father of defendant and the said Siddaiah is the uncle of defendant. The said Ningegowda, Basamma, Basavaiah and Siddaiah are all no more. On the date of gift deed, the said Basamma, Basavaiah and Siddaiah were in possession and enjoyment of the suit schedule property along with their family members including defendant. The katha also recorded jointly in the name of Basavaiah and Siddaiah under MR No.228/1969-70. After the

death of Basavaiah and Siddaiah, the defendant is continued in possession and enjoyment of the suit schedule property. The documents even today standing in the name of said Basavaiah and Siddaiah. The plaintiff has no right, title or possession over the suit schedule property and any part thereof. There are 30 numbers of Ankolae trees aged about 13 years old and 3 Neem trees about 15 years and other jungle trees which have been raised by the defendant. The defendant temporarily doing work at Bengaluru. Taking the advantage of the same, the plaintiff having illegal activities over the suit schedule property. The plaintiff suppressed the material facts. The plaintiff is not the resident of Kalyanikoppalu Village. **Hence, prayed that dismiss the suit of the plaintiff with cost.**

6. On the basis of the rival pleadings the following issues were framed by the Trial Court.

- 1) Whether plaintiff proves that he is in possession and enjoyment of suit schedule property as on the date of suit ?**
- 2) Whether the plaintiff proves the alleged interference by the defendant?**

3) Whether the plaintiff is entitled for relief of permanent injunction as sought ?

4) What order or decree?

7. In Order to prove his case the plaintiff has examined before the Trial Court as PW1 and got marked ExP1 to 22. In order to disprove the plaintiff's suit, the defendant has examined as DW1 and got marked ExD1 to 14. After conclusion of the Trial, the learned Trial Court heard the arguments and answered **Issue No.1 to 3 in the Affirmative and decreed the suit of the Plaintiff.**

8. Being the aggrieved by the said Judgment and Decree, the Appellant/Defendant has filed the present Appeal against the Respondent/Plaintiff for the following among other grounds:

The Judgment and Decree passed by the Trial Court is perverse, capricious, arbitrary and against to the principles of natural justice, hence the same is liable to be set aside. The Trial Court Judgment and Decree suffers from irretrievable defects resulting in miscarriage of justice and it is necessary

to set aside the same. As per the averments of the plaint, the suit schedule property is not at all granted to the plaintiff nor his ancestors, there is no any proof of documents placed by the plaintiff in order to show that, neither himself nor his ancestors given petition seeking grant of suit schedule property by the then Tahsildar, Malavalli Taluk. As per the own admission and cross-examination of PW1 and his evidence, the matter is pending before the Land Tribunal, Malavalli for grant of schedule property. Hence, the Civil Court is barred by jurisdiction as per Section 9 of CPC. The Trial court ought to have considered that, the plaintiff has no locus standi to file the suit before the Trial court for the relief of permanent injunction without the relief of declaration and without made Government as party to the proceedings. The Trial court has failed to appreciate the cross-examination and the admission of the PW1 and also failed to give much more evidencary value to the admissions in cross-examination of PW1. In the present case, the plaintiff completely taken the weakness of defendant and the Trial court also accepted the very same kind of version. The settled principles of law that, when serious dispute by the defendant alleged right, title and

possession of the plaintiff over the suit schedule property. It is presumed that, there is cloud covered on the alleged right and title of the plaintiff, such is the case of the plaintiff has to discharge the cloud from the title and then he has prove the case. The plaintiff did not converted the present suit for declaration. Hence, the Appellant/Defendant has sought for availing the appeal and thereby the Judgment and Decree of Trial court has to be set aside with respect to dismissing the suit.

9. Thus, in view of the above Appeal grounds having heard the arguments addressed by the learned counsels for the appellant and respondent. By considering the materials available on record, the following points arise for the consideration of this court.

POINT No.1: Whether the Judgment passed by the Trial Court in O.S.No:130/2012 dated 03.01.2023 is perverse, capricious, erroneous, illegal and against the materials placed on record?

POINT No.2: Whether the impugned Judgment and Decree passed by the learned Trial judge requires to be interfered with?

POINT No.3: What Order?

10. The findings of this court on the above points are as under:

POINT NO.1 : IN THE NEGATIVE
POINT NO.2 : IN THE NEGATIVE
**POINT NO.3 : AS PER THE FINAL ORDER,
FOR THE FOLLOWING:**

R E A S O N S

11. **POINT No.1 and 2** : These points are interconnected; hence in order to avoid repetition of facts, above said points are taken up for common discussion.

12. The Plaintiff has filed this suit before the Trial Court against the defendant for seeking the relief of permanent injunction in respect of suit schedule property. In this suit the burden lies on the plaintiff to prove his possession and enjoyment over the suit schedule property and interference by the defendant.

13. ***As per Section 101 to 103 of The Indian Evidence Act***, burden of proof on Plaintiff to establish averments of plaint. The plaintiff has examined before the Trial Court as PW1 and filed his affidavit evidence in lieu of his examination in chief, wherein he has deposed that, he is in possession and enjoyment over the suit schedule property. The PW1 reiterated the averments of the plaint. The PW1 got marked ExP1 to ExP22.

14. In order to disprove the plaint averments, the defendant has examined as DW1 by filed affidavit in lieu of his examination in chief and reiterated the written statement averments. The DW1 got marked ExD1 to 14.

15. The documents are produced by the PW1 before the Trial court that, the ExP1 to 6 are the Pasalu Pahani's, ExP7 is the Mahazar drawn by Deputy Tahsildar, ExP8 is the Survey Sketch in respect of suit schedule property, ExP9 is the mahazar, ExP10 to 12 are the old survey documents in respect of suit schedule property, ExP13 is the endorsement issued by Belakavadi police on 20.05.2011, ExP14 to 17 are

the demand register extracts and ExP18 to 22 are the Pasalu Pahani's.

16. The documents are produced by the DW1 that, ExD1 is the registered gift deed dated 30.11.1961, ExD2 to 6 are the computerized RTCs, ExD7 is the mutation register extracts, ExD8 and 9 are the tax paid receipts and ExD10 to 14 are handwritten RTCs.

17. The learned counsel for the Appellant argued before this court that the plaintiff is not in possession and enjoyment over the suit schedule property. The boundary mentioned in the suit schedule is not correct. The plaintiff has failed to produce the documents in respect of his possession and enjoyment over the suit schedule property. The plaintiff also failed to prove the alleged interference by the defendant. The Trial court by noticing this fact ought to have dismissed the suit of the plaintiff but Trial court decreed the same. **With these submissions the learned counsel for the Appellant/ Defendant sought for allowing the appeal.**

18. The learned counsel for the respondent argued before this court that, the plaintiff and his ancestors are in possession and enjoyment over the suit schedule property. After the death of his ancestors, the plaintiff is continued his possession and enjoyment of the same. The defendant is the stranger to the suit schedule property. He is interfered with possession of the plaintiff over the suit schedule property. The plaintiff has produced relevant documents before Trial court to prove his possession and enjoyment over the suit schedule property and interference by the defendant. The Trial court considered the oral and documentary evidence of the plaintiff and rightly decreed the suit of the plaintiff. **Hence, prayed that, appeal filed by the appellant may be dismissed with cost.**

19. In light of arguments canvased by the learned counsel for appellant and respondent, this court has perused the materials available on record. After perused the plaint, it is noticed that, the plaintiff has filed this suit against the defendant for the relief of permanent injunction in respect of suit schedule property. In this suit burden always lies to

plaintiff to prove his possession and enjoyment over the suit schedule property and interference by the defendant.

20. The Trial court records show that, the suit in OS No.130/2012 was dismissed on 16.08.2012 on merits. The plaintiff herein had preferred an Appeal before this court by filing an appeal in RA No.40/2014. The said appeal came to be allowed on 09.09.2016 and remand the matter to Trial court. Hence, the Trial court restored the case and given opportunity to both the parties to submit the oral and documentary evidence. Finally, disposed the suit on merits on 03.01.2023. The defendant has challenged the said Judgment and Decree before this court by filing present appeal.

21. This court let us discuss about the documents produced by the parties to the suit. The plaintiff pleaded that, since from ancestors, himself and his ancestors are in possession and enjoyment of the suit schedule property as unauthorized cultivators. After the death of his ancestors, the plaintiff is continued his possession and enjoyment over the suit schedule property. ExP1 to 6 are show that, one

Thimmannachar is the Hiduvalidar of property in Sy.No.95. The name of the Thimmannachar has been entered in the column No.4 of said document as a cultivator. The said Thimmannachar is the grandfather of the plaintiff. The ExP7 mahazar drawn by Deputy Tahsildar, Nada Kacheri, Belakavadi. The said document reveals that, the plaintiff is in possession and enjoyment of the suit schedule property. The ExP8 survey sketch disclosed that, the plaintiff encroached 2 acres 30 guntas in Sy.No.95 and also cultivated in the said property. It is clear that, plaintiff is in possession and enjoyment of the suit schedule property. The plaintiff is the unauthorized cultivator of the suit schedule property. The defendant has produced several documents. The said documents reveals that, the gift deed executed by one Ningegowda S/o Ningegowda in favour of Basamma W/o Karigowda and her 2 children in respect of Sy.No.8/1 measuring 27 guntas, Sy.No.8/2B and Sy.No.8/3, Sy.No.9/3 and Sy.No.95.

22. The ExD1 and 2 show that, the property in Sy.No.95 measuring 1 acre has been gifted by Ningegowda in favour of

Basamma, Basavaiah and Siddaiah. As per plaint averments and documentary evidence show that, the plaintiff is the unauthorized occupier of the suit schedule property. The trespasser also entitled the relief of permanent injunction. Without due process of law cannot evict the plaintiff from the suit schedule property. In this suit only consider the possession not for title of the plaintiff over the suit schedule property. The defendant has filed his written statement and denied the possession of the plaintiff is also one of the interference to the possession of the plaintiff over suit schedule property. The ExP13 show that, the plaintiff has gave the complaint before Belakavadi police station against the defendant. It is also prove the interference by the defendant to the plaintiff over the suit schedule property.

23. Admittedly, the present suit filed only the relief of bare injunction. In this suit cannot decide the ownership of the parties over the suit schedule property. In this suit only decide possession of the parties over the suit schedule property. As discussed above, the plaintiff established his possession and enjoyment over the suit schedule property.

24. In Lakshminarasimhaiah V/s Yalakkigowda reported in AIR 1965 Mysore 310 page No.311, it is held as follows:

7. the granting or refusing of injunction is a matter resting in the sound discretion with the trial court and consequently no injunction will be granted whenever it will operate oppressively, or inequitably, or contrary to the real justice of the case, in exercising the discretionary, the courts should be guided by the following guiding principles. There is no power which is more delicate, which requires greater caution, deliberation, and sound discretion or is more dangerous in a doubtful case, than the issuing an injunction. It is strong arm of equity, that never ought to be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages. The right must be clear, the injury impending or threatened, so as to be averted only by the protecting preventive process of injunction. But that will not be awarded in doubtful cases, or new ones not coming within the well established principles, for if it issues erroneously, an irreparable injury is inflicted for which there can be no redress, it begins the act of a court, not of the party who prays for it. It will be refused till the courts are satisfied that the case before them is of a right about to

be destroyed, irreparably injured, or great and lasting injury about to be done by an illegal act. In such a case the court owes it to its suitors and its own principles to administer the only remedy which the law allows to prevent the commission of such act. The discretionary power must be exercised with extreme caution and applied only in very clear cases, otherwise, instead of becoming an instrument to promote the public as well as private well fare, it may become a means of extensive and perhaps an irreparable injustice. It has been further stated on page 312 as “Besides the above, there are certain equitable principles also which govern the courts in granting or withholding of the relief of injunction. One of the main consideration is the fairness or good conduct of the party invoking the aid of the court. The court denies the relief to a suitor who is himself guilty of misconduct in respect of the matter in controversy. It is well-known maxim of equity that “he who comes into equity must come with clean hands”, or as otherwise expressed. “He that hath committed inequity shall not have equity”. The wrong conduct of the plaintiffs in the particular matter or transaction with respect to which he seeks injunctive relief precludes him from obtaining such relief. Injunction will not be granted in aid of a possession secured by stratagem or trick”.

25. The above said decision is applicable to present fact and circumstances of the case. The granting of injunction is a matter of discretionary of the court. In the present case on hand, the plaintiff has succeeded to proved his possession and enjoyment over the suit schedule property. On a careful consideration of the materials available on record, it is evident that the Learned Trial Judge has appreciated the materials available on record in a proper perspective and has applied law applicable to the facts of the case. The learned Trial Court has not committed any illegality while dismissed the suit filed by the Plaintiff. The impugned Judgment and Decree does not suffer from any legal infirmities. **With these observations, this court has answered Point No.1 and 2 in the Negative.**

26. POINT No.3 : In view of the findings on Point No.1 and 2, this court proceeds to pass the following.

ORDER

The Regular Appeal filed against the Judgment and Decree Dated: 03.01.2023 passed by the Learned 1st Addl Civil Judge & JMFC, Malavalli in O.S.No.130/2012 is hereby dismissed with costs.

***The Judgment and decree Dated:
03.01.2023 passed by the Learned 1st
Addl Civil Judge & JMFC, Malavalli in
O.S.No.130/2012 is hereby confirmed.***

Draw decree accordingly.

***Return the TCR to the Trial Court
along with a copy of the Judgment.***

(Dictated to the stenographer and directly typed by her on the computer, order corrected and then pronounced by me in the open Court on this the **2nd day of April, 2026**)

**(Sri. Mahendra M.)
Senior Civil Judge & JMFC.,
Malavalli.**