

KAMD410027962018



Presented on : 28-11-2018

Registered on : 29-11-2018

**IN THE COURT OF THE PRL CIVIL JUDGE & JMFC,
AT MALAVALLI**

PRESENT: Smt. Nazia Kouser,
B.E., LL.B.,
Prl. Civil Judge & JMFC.
Malavalli.

Dated this the 07th day of August 2026

O.S.No.425/2018

Plaintiff/s:

Sri. Lingegowda @ Mallu
S/o Late Kempegowda,
Aged about 78 years,
R/o Kiragasuru Village
(Dead by LR's)

1(a). Smt. Kempamma
W/o Late Lingegowda @ Mallu
Aged about 75 years,

1(b) Sri. B.K.L Nagaraaja Murthy
S/o Late Lingegowda @ Mallu
Aged about 60 years,

1(c) Smt. Sunandamma
D/o Late Lingegowda @ Mallu
W/o Late Lingaraju
Aged about 58 years,

1(d) Smt. Shobha
D/o Late Lingegowda @ Mallu
W/o Govinde Gowda

Aged about 56 years,
R/o Bhattaguppa Village,
Hanuru Taluk,
Chamaraja Nagar District.

1(e) Jayasheela
S/o Late Lingegowda @ Mallu
Aged about 54 years,

Plaintiff No.1(a),(b),(c),(d) & (e) are
R/o Kiragasuru Village,
B.G.Pura Hobli,
Malavalli Taluk, Mandya District.

(By Sri.N.K.S., Advocate)

V/s.

Defendant/s:

1. Smt. Susheelamma
W/o Late Nagaraju
Aged about 40 years
2. Rajamma D/o Nanjamma
Aged about 37 years,
3. Nagamma D/o Nanjamma
Aged about 35 years,
4. Sharadamma D/o Nanjamma
Aged about 32 years,

Defendant No.1 to 4 are R/o
Kiragasuru Village,
B.G.Pura Hobli,
Malavalli Taluk, Mandya District.

(By Sri.N.N.S., Advocate)

Date of institution of the suit	28-11-2018		
Nature of Suit	Permanent Injunction		
Date of the commencement of recording of the evidence	02-06-2023		
Date on which judgment pronounced	07-08-2026		
Total Duration	Years	Months	Days
	07	08	09

**Prl. Civil Judge & JMFC,
Malavalli.**

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

This is a suit for the relief of permanent injunction along with such other reliefs.

2. The suit schedule property is:-

A Dry land situated at Kiragasuru Village, B.G.Pura Hobli, Malavalli Taluk, bearing Sy.No.106/10 measuring 01.00 acres assessment of Rs.1.39ps, bounded on East by Voni, West by land of Lingamma, North by lands of Mariah, Malige and others, South by land of Hottigana Kempa.

3. The case of the plaintiff is as follows:-

The plaintiff is in lawful possession and enjoyment of the suit schedule property. The suit property originally belonged to the grandfather of the defendants, Kunneeregowda, who executed a registered usufructuary mortgage deed dated 22.05.1959 in favour of the plaintiff's father, Kempegowda,

for a consideration of Rs.500/- and delivered possession of the suit property to him. The plaintiff's father remained in peaceful possession and enjoyment of the suit property from the date of the mortgage. After his demise about 40 years ago, the plaintiff succeeded to such possession and has continued to remain in peaceful possession and enjoyment of the suit property.

4. It is further contended that the revenue records, including the RTC, Mutation Register Extract (M.R. No.2/77-78) and Revenue Patta, stood in the name of father of plaintiff and thereafter in the name of original plaintiff and he has been regularly paying land revenue and cultivating dry crops such as ragi, jowar and horse gram, and he has perfected his rights over the suit property by virtue of his long, continuous and uninterrupted possession.

5. It is further contended that the defendants, though they are the granddaughters of the original mortgagor, have neither right, title nor interest in the suit schedule property and have never been in possession thereof. With a malafide intention to dispossess the plaintiff, the defendants, along with their supporters, trespassed into the suit property on 15.10.2018 and attempted to interfere with his peaceful possession by cutting the standing crops and valuable trees, while proclaiming that the suit property belonged to them. The plaintiff lodged a police complaint on 17.10.2018, however, the police treated the dispute as civil in nature and

obtained an undertaking from the defendants not to interfere with his possession. The defendants are powerful persons, and the plaintiff is unable to resist their illegal acts. Hence, this suit.

6. During the pendency of the suit, the plaintiff passed away, and his legal representatives were brought on record.

7. The defendants filed their written statement by denying the plaint averments. It is contended that the suit schedule property is their ancestral property originally belonging to their grandfather, Kunneeregowda @ Eregowda. On 22.05.1959, their grandfather, due to financial necessity, borrowed a sum of Rs.500/- from the plaintiff's father, Kempegowda. The document dated 22.05.1959, though styled as a usufructuary mortgage, was in reality executed only as a security for the loan at the insistence of the plaintiff's father and that possession was never delivered to him and their grandfather continued to remain in actual possession and enjoyment of the suit property throughout.

8. The defendants further contend that their mother, Nanjamma, purchased the suit schedule property from her father, Kunneeregowda @ Eregowda, under a registered sale deed dated 28.05.1977 for a consideration of Rs.1,000/-. Out of the sale consideration, Rs.500/- was paid to her father and the balance amount was retained to discharge the loan due to the plaintiff's father. Thereafter, on

08.06.1977, Nanjamma sold 20 guntas of the eastern portion of the property to her sister, Eramma, and utilized the sale proceeds to repay the loan of Rs.500/-. Upon repayment of the loan, the mortgage deed was torn up in the presence of the parties, as was the prevailing custom.

9. It is further contended that ever since the purchase, Nanjamma and thereafter the defendants have been in continuous possession and enjoyment of the suit schedule property. They have raised cattle, constructed a tin-sheet shed and haystack, and carried on dairy farming in the suit property. Due to poverty and illiteracy, they did not immediately secure mutation of the revenue records in their names. When they applied for mutation in the year 2016, they came to know that the RTC stood in the name of the plaintiff. Challenging the said entries, they preferred an appeal before the Assistant Commissioner in R.Misc. No.56/2016, which was allowed, and consequently the revenue records were mutated in the name of their mother, Nanjamma, under M.R. No.34/2019-20. Subsequently, the RTC came to be entered jointly in the names of the first defendant and Mari Gowda under M.R. No.42/2021-22.

10. The defendants further contend that on 15.10.2018, the plaintiff attempted to interfere with their peaceful possession by entering the suit property and trying to harvest the crops and trees standing thereon and they resisted plaintiff with the intervention of elders. When the plaintiff again attempted to

interfere with their possession, the defendant No.1 lodged a complaint before the Belakavadi Police Station on 17.10.2018, and the police advised the parties that the dispute was civil in nature. On these grounds prayed to dismiss the suit.

11. On the basis of the rival pleadings, this court has framed the following:

ISSUES

1. Whether the plaintiff proves that, he is in / they are in possession of suit schedule property?
2. Whether the plaintiff further proves that alleged interference of defendants?
3. Whether the plaintiff is/are entitled for the reliefs as sought in plaint?
4. What order or decree?

12. In order to prove the case of the plaintiffs, the plaintiff No.1(b) was examined as PW1 and got marked Ex.P1 to P21. Witness by name H Rajanna was examined as PW.2. The defendants did not choose to lead evidence.

13. Heard and perused the records.

14. Now the that arise for my consideration are:-

1. Whether the plaintiff is entitled for the relief claimed in the suit?
2. What order or decree?

15. My findings on the above Issues are as under:

Issue No.1: In the Affirmative

Issue No.2: In the Affirmative

Issue No.3: In the Affirmative

Issue No.4: As per the final order below

for the following:

REASONS

16. Issue Nos.1 to 3:- These issues are taken up together for common discussion in order to avoid repetition of facts.

17. The case of the plaintiff is that the suit schedule property was mortgaged in favour of his father under a registered usufructuary mortgage deed dated 22.05.1959, pursuant to which possession was delivered, and after his father's demise, he continued in peaceful possession and enjoyment of the suit property. The revenue records stood in the names of his father and thereafter in his own name, and that he has been cultivating the land and paying land revenue continuously. The defendants have no manner of right over the suit property and, on 15.10.2018, unlawfully attempted to dispossess him, leading him to lodge a police complaint.

18. In order to substantiate the case of the plaintiffs, plaintiff No.1(b) examined himself as PW.1 by filing affidavit in lieu of examination in chief wherein he has reiterated the plaint averments and got marked Ex.P1 to 21.

19. Ex.P1 is the certified copy of the mortgage deed dated 22.05.1959. Ex.P2 to Ex.P7 and Ex.P20 are the RTC extracts. Ex.P8 to Ex.P13 are the tax paid receipts. Ex.P14 is the agricultural implements passbook. Ex.P15 to Ex.P17 are the photographs, and Ex.P18 is the CD. Ex.P19 is the endorsement issued by the Belakavadi Police. Ex.P21 is the order passed by the Deputy Commissioner in R.P. No. 94/2019.

20. Witness by name H. Rajanna was examined as P.W.2 by filing his affidavit in lieu of examination-in-chief wherein he has deposed that the defendants' grandfather, Kunneeregowda, had executed a mortgage in respect of the suit schedule property in favour of the plaintiff's father, Lingegowda @ Mallu, for a period of eight years to meet his legal necessities, particularly for discharging debts, and had delivered possession of the suit property to him. Since then,

the plaintiff's father and thereafter the plaintiff has been cultivating crops such as ragi, jowar and horse gram in the suit land and have been in continuous possession and enjoyment of the property for about 40 years. The plaintiff's father, Lingegowda @ Mallu, died about six years prior to his deposition.

21. P.W.2 has further deposed that during the lifetime of the plaintiff's father, he had grown five neem trees, four acacia trees and two tamarind trees in the suit property. On 15.12.2018, the defendants, with the support of influential persons, trespassed into the suit property and cut down the said trees. Thereafter, he convened meetings of the elders and advised the defendants not to interfere with the plaintiff's peaceful possession and enjoyment of the suit property. Despite such intervention, the dispute continued, whereupon the plaintiff's father approached the police and lodged a complaint. However, the police informed both parties that the dispute was of a civil nature and advised them to seek appropriate relief before the competent civil court.

22. On careful perusal of documents it is seen that Ex.P1 is the certified copy of the registered usufructuary mortgage deed dated 22.05.1959. A perusal of the recitals therein discloses that Kunneeregowda executed the mortgage deed in favour of Kempegowda, the father of the plaintiff, for a consideration of Rs.500/-. The recitals further reveal that the mortgage amount was borrowed for discharging a loan of Rs.200/- due to Pillalinga Shetty of Bellakvadi Village and for clearing certain other hand loans. The document also specifically records that possession of the mortgaged property was delivered to the mortgagee, Kempegowda. The survey number mentioned in the mortgage deed is Sy.No.106/10, which corresponds to the suit schedule property.

23. It is true that the boundaries mentioned in Ex.P1 do not exactly tally with the boundaries described in the plaint schedule. The learned counsel for the plaintiff has contended that the mortgage deed was executed in the year 1959 and that, over the passage of several decades, the boundaries of agricultural lands are liable to undergo changes due to

subdivision, transfers and changes in adjoining ownership. This contention appears to be plausible. Mere variation in boundaries, particularly in respect of an old document, cannot by itself outweigh the significance of the survey number specifically mentioned in the document. The plaintiff has further explained that the original mortgage deed has been lost and, therefore, only a certified copy could be produced. No material has been placed on record to discredit the authenticity or admissibility of the certified copy.

24. The defendants have contended that the mortgage amount was subsequently repaid and that the mortgage deed was torn up and destroyed after redemption. However, except making such a plea in the written statement, no evidence whatsoever has been adduced to substantiate the same.

25. At this juncture, it is necessary to refer the decision of **Hon'ble Apex Court in Vidyadhar versus Manikrao reported in (1999) 3 SCC 573** wherein it is observed that, when a party does not appear in the witness box and does not offer himself to be cross-examined by the other side, a

presumption can be drawn that the case set up by him is false. Presumption under Section 114 of the Indian Evidence Act is that if a party does not enter into the witness box, an adverse presumption has to be drawn against that party.

26. The defendants have abstained from the witness box and has not made any statement on oath in support of their pleading set up in the written statement. On the basis of the ruling of the Hon'ble Apex Court discussed above an adverse inference against the defendants is drawn. In the absence of any oral or documentary evidence regarding redemption of the mortgage or destruction of the original mortgage deed, the said contention of the defendants cannot be accepted.

27. Ex.P2 to Ex.P7 and 20, being the RTC extracts, disclose the name of Lingegowda @ Mallu, the original plaintiff, in relation to the suit property. These revenue records lend support to the plaintiff's assertion regarding possession and cultivation of the land.

28. Ex.P8 to Ex.P13 are the tax paid receipts. Though these receipts stand in the name of Lingegowda @ Mallu, the survey number is not specifically mentioned therein. Consequently, these documents by themselves are not sufficient to conclusively establish that they pertain to the suit schedule property.

29. Ex.P14 is the Agricultural Implements Passbook standing in the name of Lingegowda @ Mallu. The passbook specifically mentions Sy.No.106/10 measuring 40 guntas, which corresponds to the suit schedule property. This document substantially corroborates the plaintiff's claim regarding possession and cultivation of the suit land. Ex.P15 to Ex.P17 are the photographs, while Ex.P18 is the CD containing the photographs.

30. Ex.P19 is the endorsement issued by the Belakavadi Police in respect of the complaint lodged against Susheelamma and others on 17.10.2018. The endorsement shows that the dispute between the parties was treated as a civil dispute and that they were advised to seek appropriate relief before the competent civil court. Though the

endorsement does not establish the plaintiff's title or possession, it indicates a dispute regarding the suit property existed between the parties even prior to the institution of the present suit. Ex.P21 is the order passed by the Deputy Commissioner in R.P. No.94/2019, directing that the pendency of the present suit be reflected in the RTC records relating to the suit property.

31. On an overall appreciation of the documentary evidence, Ex.P1 clearly evidences the creation of the usufructuary mortgage and delivery of possession in favour of the original plaintiff's father. The revenue records at Ex.P2 to Ex.P7 and 20 and the Agricultural Implements Passbook at Ex.P14 corroborate regarding possession of original plaintiff Lingegowda @ Mallu and cultivation of the suit property. The present plaintiffs, being the legal representatives of the deceased original plaintiff, are in continuation of his possession and enjoyment of the suit schedule property.

32. The defendants, having failed to adduce any evidence to prove redemption of the mortgage or restoration of possession. The defendants did not choose to cross-

examine PW.1, and consequently, the evidence of PW.1 has remained unchallenged. Accordingly, the documentary evidence on record probabilises the plaintiffs case of lawful possession over the suit schedule property. So, the case of the plaintiff remained unchallenged and unrebutted. Therefore, there is no impediment to believe the case of the plaintiffs. Therefore, the plaintiffs are entitled for the relief claimed in the suit. Accordingly, Issue No.1 to 3 are answered in the affirmative.

Issue No.4:

33. In the light of the above discussions on issue No.1 to 3, I proceed to pass the following:-

ORDER

The suit of the plaintiffs is hereby decreed with the costs.

The defendants, their agents, servants, or any person claiming through or under them are hereby permanently restrained from interfering with the plaintiffs peaceful possession and enjoyment of the suit schedule property except in accordance with due process of law.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed by her, corrected and then pronounced by me in open Court on this the 07th day of August 2026)

(Nazia Kouser)
Prl. Civil Judge & JMFC.,
Malavalli.

ANNEXURE

List of witnesses examined in favour of plaintiff:

PW1 : K.L. Nagarajamurthy
PW2 : H. Rajanna

List of witnesses examined in favour of defendants:

-NIL-

Documents exhibited on behalf of plaintiff:

Ex.P1 : Certified copy of the mortgage deed
dated 22.05.1959.
Ex.P2 to P7 & P20 : RTC extracts.
Ex.P8 to P13 : Tax paid receipts.
Ex.P14 : Agricultural implements passbook.
Ex.P15 to P17 : Photographs
Ex.P18 : CD.
Ex.P19 : Endorsement issued by the
Belakavadi Police.
Ex.P21 : Order passed by the Deputy
Commissioner in R.P. No. 94/2019.

Documents exhibited on behalf of defendant:

-N I L-

**Prl. Civil Judge & JMFC.,
Malavalli.**