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**IN THE COURT OF I ADDITIONAL SENIOR CIVIL JUDGE
AND JMFC, HUNSUR**

Dated this the 4th day of April, 2026

:: PRESENT ::

Smt. Bhagyamma, B.Com., LL.B.,
I Addl. Senior Civil Judge & JMFC,
Hunsur

R.A./29/2024

APPELLANTS:

- 1) M/s Shiva and Company,
Toddy Contractors,
Rep. By Prakash,
Manager,
Aged about 49 years,
- 2) Smt. Gowramma,
W/o late Subbanna,
Aged about 55 years,
Chamundeshwari Hindu
Military Hotel,
Both R/at No.1855,
Musaphir, Khana Road,
Bridge Mohalla,
Hunsur.

(By Sri MRH, Adv.)

-Vs-

RESPONDENTS:

- 1) Aslam Pasha A.
S/o late Wazir,
Aged about 53 years,

Mechanic,
No.1855, Musaphir Khana Road,
Bridge Mohalla,
Hunsur.

- 2) The Chief Officer,
Town Municipal Council,
Hunsur Town.

(By Sri **CSS**, Adv. For R1 and
R2 - **Exparte**)

Date and nature of decree or order appealed against	:	Judgment & Decree in OS. No.309/2014, dtd: 25.04.2024 on the file of the learned Prl. Civil Judge & JMFC, Hunsur.						
Date of the institution of the appeal	:	03.07.2024						
Date of Pronouncing of judgment	:	04.04.2026						
Total duration of appeal	:	<table border="0"> <tr> <td>Year/s</td> <td>Month/s</td> <td>Day/s</td> </tr> <tr> <td>01</td> <td>09</td> <td>01</td> </tr> </table>	Year/s	Month/s	Day/s	01	09	01
Year/s	Month/s	Day/s						
01	09	01						

[BHAGYAMMA]

I Addl. Senior Civil Judge & JMFC,
Hunsur.

:: JUDGMENT ::

The Appellants have filed this appeal under Order 41 Rule 1 of CPC by challenging the judgment and decree passed in OS.No.309/2014 dated 25.04.2024 on the file of Prl. Civil Judge & JMFC, Hunsur.

2. The respondent-1 is the plaintiff and appellants and respondent-2 are defendants-1 to 3 before the Trial Court and are referred in the same ranking in course of this judgment.

3. The brief facts of the case of the Plaintiff's is as hereunder;

It is the case of the plaintiff that one Late. Vazeer father of the plaintiff passed away in the year 1995. There after the 1st defendant continued as a tenant under Smt. Fathimabi, mother of plaintiff and the rent was increased to Rs.250/- during 1995. Under the instigation of one Sri. C.R. Ravindra Kumar who was also a tenant under Late. Vazeer and there after under Smt. Fathimabi, the 1st defendant stopped paying rents for about 10-12 years. Since Smt. Fathimabi was to recover possession of the property leased to C.R. Ravindrakumar in a long fought battle before this Court could not take action against the 1st defendant for recovery of rents and also for possession of the property from the 1st defendant since he had become

a defaulter in payment of rents. The 1st defendant illegally without any authority inducted the 2nd defendant into suit schedule premises without the knowledge or consent of original Land Lord. That in collusion with the above said C.R. Ravindra kumar S/o C.S. Rajagopalasetty and also Sri Gopala Krishna S/o Late. Ramakrishnasetty against whom also a separate suit filed before this Court for recovery of possession, the 2nd defendant in creating documents as if the schedule property belongs to 3rd defendant and that he is paying ground rent to him.

4. It is further case of the plaintiff that, under a Registered Partition Deed dated 17.01.2014 entered into between the plaintiff's family members, the schedule property fell to the share of plaintiff so, the 1st defendant become his tenant and is required to pay rent to the plaintiff. After recovery of possession of property let out to Sri.C.R. Ravindrakumar who was a tenant in the adjoining premises, the 1st defendant demanded the rents due, orally on several occasions. But he went on neglecting the lawful demands of plaintiff, hence the legal notice was issued on 08.05.2014 terminating the oral tenancy and seeking for possession of the property from defendants-1 & 2 in accordance with law. But the 1st defendant avoided the notice, whereas the notice was served on defendants No.2 and 3. The 3rd defendant has not replied the notice whereas the 2nd defendant has given an untenable reply on 20.05.2014 denying the title of

plaintiff over the schedule property and contended that it belongs to the 3rd defendant. Hence, the 3rd defendant is also arrayed as a party to the suit. Therefore, the plaintiff filed the suit before the court seeking the relief.

5. On the service of the summons the 1st defendant has appeared through the counsel and filed written statement denying the plaint averments at para No.2 to 9. He contended that, he is the manager of the company and for the past 3-4 years one Basavaraj is looking after the same. Further the schedule property does not belongs to the plaintiff nor his forefathers. The schedule property belongs to the 3rd defendant. For the past 30 years the defendant No.1 is in possession of said property and paying a ground rent of Rs.7200/- to the 3rd defendant. From the date of possession of the schedule property, the 1st defendant is carrying on the liquor business. After the government ban the licence of liquor business, the 2nd defendant was induced in the schedule property who was in carrying business in the footpath adjacent to the schedule property. On requisition of the 2nd defendant, the defendant-1 induced her in the schedule property. Still the defendant No.1 is paying the rent to defendant No.3, except them either plaintiff nor their forefathers have right in the schedule property. Even though the plaintiff having knowledge of the said fact, he got created the document with respect to the schedule property in order to give trouble to the defendants and to get wrongful gain, he is

trying to grab the property from the defendants. The defendant No.1 specifically denied the relationship of tenant and land lord with respect to schedule property and prays to dismiss the suit of the plaintiff.

6. Upon the service of summons, the 2nd defendant has appeared through the counsel and filed her written statement. She contended that, it is absolutely false to state that the 2nd defendant has taken the plaint schedule on lease from one Late Vazeer, the father of the Plaintiff, during 1985 and she agreed to pay monthly rent of Rs.200/-. The real fact is that the defendant-2 has taken the entire vacant area from the 3rd defendant, who is owner of the same on ground rent and has made construction of the building. As such, the plaintiff cannot claim any ownership over the property, which absolutely belongs to the 3rd defendant. The defendant No.2 is not aware of the father of plaintiff. When he had no transaction of whatsoever nature over the plaint schedule, the question of being tenant under plaintiff on the death of his father, does not arise. When plaintiff is not the owner, question of payment of enhance rent also does not arise at all and the plaintiff is put to strict proof of the same. When the plaintiff nor his father was owner of the property, the question of defendant No.2 stopped paying rent from 10 years, does not arise. When 3rd defendant is the owner of the plaint schedule, the question of 2nd defendant colluding with 3rd defendant and creating

documents, does not arise. The 3rd defendant is the owner of plaintiff schedule to whom she is paying rent. The defendant No.2 is not aware of any partition deed entered into between plaintiff and his family members. However, the plaintiff schedule does not belong to Plaintiff, but the 3rd defendant is owner of the same. All other allegations made in the plaint, which are not specifically traversed herein and contrary to this statement is hereby denied. She is tenant under 3rd defendant relating to plaintiff schedule property. Hence prays for dismissal of the suit. Basing on the said pleadings, the Trial court framed the following Issues:

ISSUES

1. Whether the plaintiff proves that, he is the absolute owner of the schedule property?
2. Whether the plaintiff proves that, the defendant No.1 was inducted as tenant in the suit schedule property?
3. Whether the plaintiff proves that, defendant No.1 and 2 have to hand over the vacant possession of the schedule property as they fail to pay rent to the plaintiff?
4. Whether the plaintiff is entitled for the mesne profit from the date of suit till recovery?
5. Whether the plaintiff is entitled for relief?
6. What order or decree?

7. To prove the claim, the plaintiff got examined himself as PW.1 and got marked Ex.P1 to Ex.P32. Per contra, the defendant No.1 has been examined as DW-1 and got marked Ex.D1 & D2. The defendant No.2 has been examined as DW-2.

8. After hearing arguments of both side, the trial court has decreed the suit of plaintiff.

9. Aggrieved by the judgment and decree of the trial court, the appellants herein have preferred this appeal on the following grounds:

The judgment & Decree passed by the trial court is not proper and the trial court not considered Section 106 of T.P Act in the course of discussing the ownership. The trial court loses its sight towards the plaintiff's collusion with Town Municipal Council. The trial court did not appreciate the documents at Ex.P1 to 32 in true spirit. The Trial Court findings towards arrears of rent to Rs.2,000/- per month is contrary to evidence, documents and it is a mere presumption drawn by the Trial Court in arriving at arrears of rent which according to the Trial Court judgment damages, which is highly not maintainable under law. The Trial Court never discussed the documents and evidence placed by the appellants before it. Merely gaining confidence in respect of evidence and documents of the 1st respondent, the trial court decreed the suit, is unknown in law wherein the

Trial Court had to compare and discuss the evidence available on both sides and also discuss commonly on all documents of the contesting parties, which is not done so by the Trial Court. The affidavit sworn by the plaintiff in lieu of examination of chief is not in accordance to law and in-complete affidavit which is in fact not at all appreciated by the Trial Court. The serious dispute regarding the ownership of 1st respondent is taken lightly by the Trial Court and weighed much to the plaintiff's side resulting in further mis-carriage of justice. The Trial Court ought to drawn adverse inference against the plaintiffs for with holding material evidence and the Trial Court has not applied correct principles of law for the facts of the case. The judgment and decree of the Trial Court is not supported by proper and valid reasons and it has relied on in admissible and irrelevant evidence. If at all compare the oral and documentary evidence lead on behalf of the plaintiff, is contrary to each other. The reasons given by the Trial Court to grant the reliefs claimed by the plaintiff is untenable. The Trial Court wrongly concluded that the plaintiffs have proved that he is in possession of plaint schedule property. The impugned judgment and decree passed by the Trial court is wrong, capricious, illegal biased, contrary to law, weight of evidence and probabilities of the case. On these grounds among others, the appellants prayed to set-aside the judgment and decree passed in OS.No.309/2014 on

the file of Prl. Civil Judge & JMFC, Hunsur by allowing this appeal.

10. After service of appeal notice, the respondents/plaintiffs appeared through their counsel and have supported the findings of the trial court.

11. The entire records of O.S.No.309/2014 on the file of Prl. Civil Judge and JMFC, Hunsur, has been called for and same has been perused by this court.

12. Heard the learned counsel for the appellants and learned counsel for respondent. Perused the materials available on record.

13. In view of the rival pleadings of the parties, evidence and grounds urged in the appeal, the following points that would arise for my consideration are;

1. Whether the Trial Court erred in decreeing the suit and it requires interference by this court?
2. What order?

14. On the basis of the evidence available on record, my findings on the above points are as under:

Point No.1 : In the Affirmative

**Point No.2 : As per final order
for the following:**

REASONS

15. Points No.1 :-

It is a settled and well-established principle of civil law that the plaintiff must succeed on the strength of his own title and not on the weakness of the defendant. In a suit for declaration of title, the burden of proof squarely lies upon the plaintiff in terms of Sections 101 to 103 of the Indian Evidence Act and such burden never shifts unless a prima facie case is first established. The plaintiff is required to prove his title through clear, cogent, consistent and legally admissible evidence. Where the title is put in issue and a serious cloud is raised over it, the proof of the same required more stringent and the Court must insist upon strict proof of ownership. This requirement becomes even more stringent in the cases where the property is alleged to be public property or belonging to a local authority such as a Municipality, in which case the plaintiff must establish a better and lawful title as against such public authority.

16. In the present case, the plaintiff has relied upon a partition deed dated 17.01.2014, certain revenue and municipal records which got marked on behalf of plaintiff and also the certified copies of earlier judgments. Upon careful and anxious consideration of these documents, it becomes evident that none of them conclusively establish the plaintiff's origin of title. The partition deed relied upon by the plaintiff merely reflects an internal arrangement

among family members and only indicates the division of whatever rights the parties to the partition may have claimed inter se. It does not disclose how the property originally devolved upon the family, nor does it establish the root or source of title. It is a well-settled proposition of law that a partition deed does not create title, but only apportions pre-existing rights and therefore, unless the plaintiff establishes that his predecessor had a valid and lawful title to the property, the partition deed by itself cannot confer ownership.

17. Similarly, the revenue and municipal records produced by the plaintiff, such as khata extracts, tax paid receipts and other entries, are maintained primarily for fiscal and administrative purposes. Such entries may at best show possession or payment of taxes, but they do not confer or prove ownership. The Courts have consistently held that revenue entries are not documents of title and cannot be treated as conclusive proof of ownership in the absence of a valid title deed. They can only serve as corroborative evidence and not as the foundation of title. The certified copies of earlier judgments relied upon by the plaintiff also do not advance his case, as there is nothing on record to show that those judgments were inter parts adjudications directly determining the title of the suit property. Unless the issue of ownership was directly and conclusively decided between the parties, such judgments cannot operate as binding proof of title.

18. The significant and material aspect of the case is the consistent defence taken by the defendants that the suit property belongs to the Town Municipal Council. This plea introduces a serious cloud over the plaintiff's title. Once such a cloud is raised, the burden on the plaintiff becomes heavier and he is required to establish a clear and better title not only against the defendants, but also as against the Municipality. Mere denial of the municipal ownership or mere assertion of private ownership is not sufficient. The plaintiff is required to produce convincing documentary evidence demonstrating lawful acquisition of title from a competent authority.

19. On re-appreciation of the oral evidence, this Court finds that the testimony of DW1 and DW2, when considered in its entirety, supports the case of the appellants and renders the findings of the Trial Court unsustainable. The consistent defence of the defendants is that they are in possession of the suit property in their own right and not as tenants under the plaintiff and this stand has been reiterated in both pleadings and oral evidence. Despite extensive cross-examination, no clear or unequivocal admission has been elicited to establish the existence of a landlord-tenant relationship. Mere suggestions put in cross-examination, having been denied, do not constitute evidence, and therefore the burden of proving tenancy continues to rest on the plaintiff, which remains undischarged.

20. The evidence of DW1 shows long-standing possession independent of the plaintiff and any minor inconsistencies do not affect the core defence. Similarly, DW2 has clearly deposed that her possession is through defendant No.1 and that she has no dealings with the plaintiff, thereby negating any acknowledgment of tenancy. The absence of any documentary evidence such as rent receipts or lease agreements further weakens the plaintiff's case and bring the credibility to defendants' version. The Trial Court has failed to properly appreciate this oral evidence and has erroneously presumed tenancy without proof, ignoring the settled principle that possession claimed in one's own right cannot be converted into tenancy in the absence of clear evidence. The oral evidence of the defendants, on the contrary is consistent with their plea and probabilises their case, especially when the plaintiff's title itself is under serious dispute. Accordingly, this Court holds that the oral evidence of DW1 and DW2 strengthens the defence of the appellants and clearly establishes that the plaintiff has failed to prove the existence of a landlord-tenant relationship or his entitlement to possession. The findings of the Trial Court being perverse and unsupported by evidence are liable to be set aside, and the appeal deserves to be allowed on this ground as well.

21. In the present case, the plaintiff has failed to produce any document showing the root of title. There is

no grant order or any municipal allotment, there was no registered sale deed and no chain of title tracing ownership from the original source. This failure goes to the very root of the matter and strikes at the foundation of the plaintiff's claim. In the absence of such primary evidence, the Court is justified in drawing an adverse inference under Section 114(g) of the Evidence Act that the plaintiff has withheld the best possible evidence. The non-production of foundational title documents creates a strong presumption against the plaintiff's case.

22. The Trial Court, however, has proceeded to assume ownership in favour of plaintiff merely on the basis of the partition deed and revenue entries, without examining whether the plaintiff had established the root of title. It has failed to appreciate the well-recognized distinction between possession and ownership, it has overlooked the legal requirement that the title must be proved independently and conclusively. Such an approach is contrary to settled principles of law and cannot be sustained. Therefore, this Court is of the considered opinion that the plaintiff has failed to establish lawful ownership of the suit schedule property and that the title remains unproved, doubtful and clouded.

23. Insofar as the question of landlord and tenant relationship is concerned, it is incumbent upon the plaintiff to establish the existence of a jural relationship by proving induction of the tenant, payment or agreement

of rent and acknowledgment of the plaintiff or his predecessor as landlord. The burden to prove such relationship lies entirely depends upon the plaintiff. Herein, the plaintiff has asserted that defendant No.1 was inducted as a tenant by his father and that the tenancy continued under his mother after his father's death. However, the plaintiff has not produced any lease agreement, rent receipts or any documentary evidence whatsoever to substantiate this claim. The entire case of tenancy rests only on oral assertions, which are not sufficient in law, particularly when the same are specifically denied by the defendants.

24. The defendants have categorically denied the existence of any landlord-tenant relationship and have asserted that they are in possession of the property under the Municipality. They claim an independent right of occupation and deny the title of the plaintiff altogether. During cross-examination also, the plaintiff has failed to elicit any clear or unequivocal admission from the defendants regarding tenancy. The evidence on record thus remains inconsistent and insufficient to establish the existence of a jural relationship. It is a settled principle that when the title itself is in serious dispute and possession is claimed independently, the tenancy cannot be presumed or inferred in the absence of clear proof.

25. The Trial Court has, however, presumed the existence of tenancy without any supporting evidence and has failed to appreciate properly the burden of proof. It has ignored the categorical denial by the defendants and has not examined whether the essential ingredients of tenancy have been established. Such a finding is not based on proper appreciation of evidence and is therefore unsustainable. Consequently, this Court holds that no landlord-tenant relationship has been proved and that the plaintiff has failed to discharge the burden cast upon him.

26. With regard to termination of tenancy under Section 106 of the Transfer of Property Act, it is a fundamental requirement that there must exist a valid jural relationship of landlord and tenant. Only when such relationship is established does the question of issuance and validity of notice arise. In the present case, since the very existence of tenancy has not been proved, the issuance of notice under Section 106 loses its legal importance. The foundation itself being lacking, the superstructure cannot stand. Even otherwise, the notice is disputed and the service of the same has not been conclusively established. There is no satisfactory evidence to show strict compliance with the statutory requirements of Section 106 of the Transfer of Property Act. It is well settled that a notice cannot create a tenancy where none exists, nor can it cure the absence of a jural relationship.

Therefore, the alleged termination of tenancy is legally unsustainable.

27. Coming to the appreciation of evidence by the Trial Court, it is the duty of the First Appellate Court to reappraise the entire evidence and arrive at an independent conclusion. On a careful re-examination of the record, it is evident that the Trial Court has committed several serious errors. It has relied upon the evidence produced by the plaintiff while ignoring the defence set up by the defendants. It has failed to properly consider the plea of municipal ownership and has not recorded any finding regarding the root of title. It has misapplied the principles relating to burden of proof and has erroneously presumed ownership in favour of the plaintiff without sufficient evidence. Further, the award of damages at the rate of Rs.2,000 per month has been made without any supporting evidence or reasoning, rendering the same arbitrary.

28. The finding of Trial Court can be said to be perverse when it is based on no evidence, when it ignores material evidence or when it is contrary to the weight of evidence and probabilities of the case. The findings recorded by the Trial Court in the present case clearly fall within this category. They are not supported by proper reasoning and reflect non-application of judicial mind. Therefore, this Court has no hesitation in holding that the

judgment and decree of the Trial Court are illegal, arbitrary and unsustainable in law.

29. Upon a comprehensive reappraisal of the entire material on record and the applicable legal principles, this Court is of the considered view that the plaintiff has failed to prove his title over the suit property, has failed to establish the existence of a landlord-tenant relationship, and has also failed to prove valid termination of tenancy. The judgment of the Trial Court suffers from serious legal infirmities and perversity and is therefore liable to be set aside. Accordingly, Point No.1 is answered in the affirmative in favour of the appellants.

30. Point No.3:- In view of my findings on the above points, this court proceeds to pass the following:

O R D E R

The appeal filed by the appellants under Order 41 Rule 1 CPC is hereby allowed with cost.

The judgment and decree dated 25.04.2024 passed in O.S. No.309/2014 on the file of the learned Prl. Civil Judge & JMFC, Hunsur are hereby set aside and the suit of plaintiff stands dismissed.

Draw decree accordingly.

Send a copy of the judgment to the
Trial Court along with TCR.

[Dictated to the Stenographer, transcribed & computerized by him, transcript revised, corrected and then pronounced by me in the open Court on this the **4th day of April 2026**]

[BHAGYAMMA]

I Addl. Senior Civil Judge & JMFC,
Hunsur