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O.S./370/2015

**IN THE COURT OF PRL. CIVIL JUDGE & JMFC
AT HUNSUR.**

DATED THIS THE 29th DAY OF APRIL, 2026

:PRESENT:

**Smt. AYISHABI.P.MAJID., B.A. L.L.B.,
PRL. CIVIL JUDGE & JMFC.,
HUNSUR.**

O.S.No.370/2015

Plaintiffs:

1. Smt.Abhida,
W/o Nazeer Pasha,
D/o Late Abdul Majid
Aged about 40 years.

2. Smt.Shahin Taj,
W/o Abdul Roof,
D/o Late Abdul Majid,
Aged about 38 years,

Both are R/at Kalenahalli Village,
Hanagudu Hobli, Hunsur Taluk,
Now R/at Sulu galale (Bidasu)
Village, Shanivara Santhe Post,
Somawarapete Taluk, Coorg Dist.

**(By Sri.B.S.Y., Advocate)
V/S**

Defendants:

1. Sri.Purushotham,
S/o Late Gurudev
Aged about 45 years,

2. Mudhu,
S/o Late Gurudev
Aged about 42 years,

3. Yadugiri,
S/o Late Gurudev,
Aged about 40 years,

All are R/at Kalenahalli Village,
Hanagudu Hobli Hunsur Taluk.

(Sri.B.A.S., Advocate)

Date of Institution of the Suit	28.08.2015
Nature of Suit	Permanent Injunction
Date of Recording of Evidence	24.02.2018
Date of closing of Evidence	30.06.2023
Date of Judgment Pronounced	29.04.2026
Total Duration	<u>Year's</u> 10 <u>Month's</u> 08 <u>Day's</u> 01

(Ayishabi.P.Majid.,)
Prl. Civil Judge & JMFC,
Hunsur.

: J U D G M E N T :

This is a suit filed by the Plaintiffs against the Defendants for the relief of Permanent Injunction to restrain the Defendants,

their agents, representatives, their family members or anybody acting on behalf of them from interfering with the peaceful possession and enjoyment of the Plaintiffs over the suit schedule property and such other reliefs.

2. The brief facts of the Plaintiff's case is that, the Plaintiffs are the absolute owners in possession and enjoyment of the suit schedule property. The schedule property was the ancestral property of the plaintiffs through Granted by the Government in LND (k)229/93,94 S.C.No.432/95,96 dated 22.12.1995 in favour of father of the plaintiffs one Abdul Majid. The said Abdul Majid died on 24.06.2004. After his death, the khata was changed in the name of plaintiffs in M.R.H 197/2014-15 dated 24.07.2015 and the Plaintiffs are in the possession and enjoyment of the suit schedule property. All revenue records of the schedule property are standing in the name of the plaintiffs and they are paying tax. The defendants have got no right to whatsoever over the suit schedule property. The plaintiffs have lodged a complaint against the defendants before the Hunsur Rural Police Station. The Defendants have been interfering with Plaintiff's peaceful possession and enjoyment of the schedule property and obstruct

the possession of the plaintiffs by laying their false claim over the suit schedule property. The Plaintiffs requested the defendants many a times not to interfere with his lawful possession of the schedule property, inspite of the same interfering in the possession of plaintiffs over the suit schedule property. Hence, the plaintiffs have constrained to file the present suit.

3. In response to the suit summons, the defendants appeared before the court through their counsel and defendant No.1 has filed written statement and denied the averments made in the plaint inter-alia contending that, one Abdul Majeed S/o Late Ismail Sab of Kalenahally village as neighbor to the defendants. He was having one acre twenty guntas of land in the Aspathre kaval village, Kasaba Hobli, Hunsur Taluk. The katha of the said land is also stands in his name. He had wife by name Fathimabi and two daughters . His family members are residing at Sulugalale, Somawarpet Taluk, Coorg District. Abdul Majeed was alone was living in the said Kalenahally village. Due to his old age and personal problem he was not in a position to do agricultural work and no one was taking care of the said Abdul Majeed. At that time, father of defendants Sri. C.G. Gurudev was taking care of

the said Abdul Majeed and also cultivating the suit schedule property on lease.

4. It is further contended that, the father of the defendants was taking care of the said Abdul Majeed and also they are living like a brothers. Further, said Abdul Majeed with an intention to gift the schedule property to Sri. C.G.Gurudev was executed the registered will on 10.12.1996 in favour of Sri. C.G.Gurudev in respect of the suit schedule property and handed over the said registered will to the said C.G.Gurudev and said C.G.Gurudev was kept the same in his house. After some time, the said Abdul Majeed was left the village by handing over the possession of the suit schedule property to Sri. C.G.Gurudev and went away to Coorg and lastly he was passed away on 15.06.2004. After the demise of the said Abdul Majeed Sri. C.G. Gurudev tried to get the katha of the suit schedule property to his name on the basis of the said registered will but the said Original will was misplaced in his house and the same was not traced to the said C.G.Gurudev and it was not possible to the said C.G.Gurudev to get the katha to his name as per the will but he was in possession and enjoyment of the suit schedule property. Further contended that,

the father of defendants was passed away on 14.04.2015 leaving behind the defendants and his wife as his only legal heirs and the defendants are in peaceful possession and enjoyment of the suit schedule property even till today as absolute owners. At the time of cleaning the house for white washing the house due to the death of the C.G.Gurudev the original registered will was traced out and the defendants are decided to get the katha after the completion of entire death ceremony of their father. When such being the case, the persons who are enimical terms with the defendants family have set up the plaintiffs who are the daughters of the Late. Abdul Majeed to get the katha to their name.

5. Further, The defendants came to know about that the plaintiffs are trying to get the katha to their name in respect of the suit schedule property which is in peaceful possession and enjoyment of the defendants, the mother of the defendants as a elder member of the family has filed the objection on 20.04.2015 not to change the katha to the name of the plaintiffs, the concerned revenue authority was also issued an endorsement to that extent, even though the revenue authority with the collusion of the plaintiffs changed the katha in the name of the plaintiffs.

The revenue authority without considering the objection filed by the mother of the defendants have changed the katha illegally in the name of the plaintiffs. On the strength of the said katha the plaintiffs are interfering with the peaceful possession and enjoyment of the defendants over the suit schedule property. The plaintiffs are not in possession and enjoyment of the suit schedule property at any point of time and are trying to disposes the defendants from the possession of the suit schedule property. The suit schedule land is pakka phoded and given the Sy.No.748/P/15. When the plaintiffs are tried to dispossess and to interfere with the possession and enjoyment of the defendants over the suit schedule property the defendants are filed the suit against the plaintiffs in O.S.No.385/2015 before this Hon'ble court for declaration and for permanent injunction. The defendants are the absolute owners of the suit schedule property and the plaintiffs are not having any right over the suit schedule property. Only on the basis of katha they are trying to interfere with the possession of the defendants with an intention to dispossess the defendants from the suit schedule property. Hence prays to dismiss the suit with costs.

6. On the basis of pleadings of the parties, my learned predecessor in office has framed the following issues for determination.

1. Whether plaintiffs prove that they are in possession and enjoyment of suit schedule property as on the date of the filing of the suit?
2. Whether plaintiffs prove the alleged interference by the defendants as contended?
3. Whether the plaintiffs are entitled for the relief as sought?
4. What decree or order?

7. After settlement of issues, the Plaintiff No.1 has entered into witness box deposed as P.W.1 and got marked documents at Ex.P.1 to Ex.P.6 and closed her side evidence and on her behalf got examined two witnesses as PW.2 and PW.3. On the other hand, defendant No.3 has entered into witness box deposed as D.W.1 and got marked documents at Ex.D.1 to Ex.D.5 and closed their side evidence and on his behalf got examined one witnesses as DW.2.

8. Heard the arguments advanced by the learned counsel for the Plaintiffs and Defendants. Perused the oral and documentary evidence placed on record.

9. My findings to the above said 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 final order,
for the following;

: R E A S O N S :

10. **Issue Nos.1 and 2:-** Since these issues are interconnected, with each other, these issues are taken up together for common discussion in order to avoid repetition of facts and evidence.

11. It is the specific case of the Plaintiffs that, the suit schedule property was granted in favour of father of the plaintiff Late.Abdul Majeed as per grant order dated 22.12.1995. The father of the plaintiffs passed away on 24.06.2004 and the khatha of the suit schedule property got changed in the name of plaintiffs and they are in possession of the suit schedule property as absolute owners. It is further stated that, the defendants without any right, title or interest over the suit schedule property are interfering with their peaceful possession over the suit schedule property. On 27.08.2015 the defendants

have obstructed the possession of the plaintiffs over the suit schedule property.

12. To substantiate their case, the Plaintiff No.1 got examined as P.W.1 and in her examination-in-chief she has reiterated the plaint averments. In support of her case she has produced the documents which are marked at Ex.P.1 to Ex.P.6. The Ex.P.1 is the Police acknowledgment, Ex.P.2 and 3 are the RTC extracts, Ex.P.4 and 5 are the mutation registers, Ex.P.6 is the Grant certificate.

13. The learned counsel for Plaintiffs vehemently argued that as per the grant certificate, the father of the plaintiffs Late.Abdul Majeed was in possession of the suit schedule property as a absolute owner. After the demise of father, the plaintiffs have succeeded to the suit schedule property however the defendants in order to knock out the suit schedule property has created the WILL. Late.Abdul Majeed never executed WILL in favour of father of the defendant No.1 . Hence prays to decree the suit. On the other hand, the learned counsel for defendants would argue that, Late.Abdul Majeed was residing at Kalenahally village and there was no other person to look after Late. Abdul

Majeed, therefore the father of the defendant No.1 looking after him. He would further argue that, during the life time of Late.Abdul Majeed he has bequeathed the suit schedule property in favour of father of the defendant No.1 Late.Gurudev. Hence as per the registered WILL, after demise of father, the defendants have become absolute owners and in possession of the suit schedule property. Hence prays to dismiss the suit with costs.

14. As the Plaintiffs are claiming permanent injunction against the Defendants the burden is upon the Plaintiffs to prove that, as on the date of filing of the suit they are in possession of the suit schedule property. In order to prove their case, the Plaintiffs have produced the documents at Ex.P1 endorsement issued by the Hunsur Rural Police Station, wherein it goes to show that, the plaintiff No.1 has given complaint against the defendants for interference in the suit schedule property. RTC extract produced at Ex.P.2 in respect of suit schedule property jointly stands in the name of plaintiffs. Further the RTC extract produced at Ex.P.3 reveals the name of Abdul Majeed S/o Ismail Sab. The Mutation produced at Ex.P.4 goes to show that, the khatha of the suit schedule property got mutated in the name of Late.

Abdul Majeed. Further the mutation produced at Ex.P.5 also goes to show that, the suit schedule property initially stands in the name of Abdul Majeed and thereafter it got mutated in the name of plaintiffs as per powthy khatha. The grant certificate produced at Ex.P.6 goes to show that, on 22.12.1995 the suit schedule property granted in favour of Late.Abdul Majeed.

15. It is to be noted that, the documents produced by the Plaintiffs in respect of suit schedule property stands in the name of Late.Abdul Majeed and Plaintiffs. It is the contention of the Defendants that, the Plaintiffs are not owners and in possession of the suit schedule property. The suit schedule property is the self acquired property of Late.Abdul Majeed he has bequeathed the suit schedule property in favour of father of defendant No.1 Late.C.G. Gurudev under the registered WILL. The father of the defendant No.1 passed away on 14.04.2015 the defendants are in possession of the suit schedule property as a absolute owners. The defendants in order to prove their case produced the documents at Ex.D1 to Ex.D5. Ex.D1 is the WILL dated 10.12.1996, Ex.D2 and 3 are the RTC extracts, Ex.D4 is

mutation register, Ex.D.5 is the death certificate of Abdul Majeed.

16. The registered WILL produced at Ex.D1 goes to show that, one Abdul Majeed S/o Ismail Sab had executed WILL in respect to suit schedule property in favour of father of defendant No.1 and the recitals of the WILL clearly goes to show that, the suit schedule property is the self acquired property same is granted in favour of Late.Abdul Majeed S/o Ismail Sab. The RTC extract produced at Ex.D.2 reveals the name of Abdul Majeed S/o Ismail Sab and goes to show that, name is entered on the basis of grant in favour of Late.Abdul Majeed S/o Ismail Sab. The RTC extract produced at Ex.D.3 for the year 2015-16 reveals the name of Abdul Majeed S/o Ismail Sab and goes to show that, name is entered on the basis of grant in favour of father of plaintiffs. The mutation produced at Ex.D.4 also goes to show that, the suit schedule property initially stands in the name of Abdul Majeed S/o Ismail Sab thereafter the khatha was got mutated in the name of plaintiffs. The death certificate produced at Ex.D.5 goes to show that, Abdul Majeed S/o Ismail Sab passed away on 15.06.2004. Hence, from the documents produced by the defendants goes to show that, Late.Abdul

Majeed S/o Ismail Sab has executed WILL in favour of father of defendant No.1 and khatha also stands in his name.

17. It is pertinent to note that, what is the true legal position in the matter of the proof of will that is elaborately discussed in the decision reported in;

AIR 1959 page 443 (H.Venkatachala Iyengar V/s B.N.Thimmajamma and Others). In the said decision their lordships have held that, the propounder of the will must prove that, the will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and put his signature on the documents of his own free will and when evidence adduced in support of the will is distinguished satisfactory and sufficient to prove the sound disposing state of the testator mind and his signature as required by the courts would be justified in making a finding in favour of the propounder. If will is challenged as surrounded by suspicious circumstances, all such litigation doubts have to be removed as cogent, satisfactory and sufficient evidence to dispel suspicion. Therefore, now this court must see whether the Plaintiff has discharged his burden as regard to proof of will.

18. The proof execution of documents required by law to be attested is contained in **Section 68 of Indian Evidence Act.**

Sections 68 to 71 of Indian Evidence Act deal with proof of documents required by law to be attested. **Section 63 of Indian Succession Act deals with execution of privileged Will. Clause (c) of Section 63 mandates that Will shall be attested by two or more witnesses. Section 68 of Indian Evidence Act** speaks that if a document is required by law to be attested, it shall not be used as evidence unless one of the attesting witnesses at least have been called, for proving its execution, if there are attesting witnesses alive and subject to the process of the Court and capable to give evidence. The proviso to the said Section makes it clear that it shall not be necessary to call an attesting witnesses in proof of execution of any document, not being a Will, which has been registered in accordance with provisions of Indian Registration Act, 1908, unless its execution by the persons by whom it purports to have been executed is specifically denied. Therefore, it is clear that so far as proving of Will is concerned, even in the absence of the testator of the Will denying his signature, law mandates that the Will shall not be used as evidence, until one of the attesting witnesses at-least has been called for the purpose of providing its execution.

19. It is to be remembered that a Will comes to live and became effective only on the death of the testator of the Will, therefore question of testator denying the execution of the Will would not arise. It is only the person who would be entitled to the property of the testator in accordance with law, who would be interested in denying the execution of Will, if the propounder of the said Will claims the property of the testator excluding of such actual legal heirs. Therefore, when a Will is denied, propounder of the Will has to prove the due execution, attestation of the Will. One of the ingredients of proving execution of the Will is to examine the attesting witnesses who have witnessed the due execution of the Will. Coming to the case on hand, having taken specific contention the defendants have not examined any one of the witnesses at Ex.D.1.

20. The burden is on the defendants to prove that Late.Abdul Majeed has executed WILL in favour of father of defendants in the presence of witnesses. It is the contention of the defendants that, attesting witnesses to the WILL at Ex.D.1 are no more therefore, they could not examine the attesting witnesses. It is pertinent to note that, if both attesting witnesses to a WILL was

dead, the WILL can be proved U/s 69 of the Indian Evidence Act by proving that the signature of at least one witness and signature of testator are in the own hand writing. Furthermore, the defendants not produced the death certificate of attesting witnesses to show that, the attesting witnesses are not alive. If there are no attesting witnesses then the signature has to be proved by examining any person who is familiar with the hand writing of deceased witness. In this case, though the defendants claims that, attesting witnesses to WILL are no more however no attempts are made by the defendants to get examine witnesses who are capable to identify the signature of the testator.

21. Apart from that, the defendants specifically taken contention that, Late.Abdul Majeed S/o Ismail Sab was at Kalenahally village and his family members were residing at Coorg District and Late.Abdul Majeed S/o Ismail Sab has leased out the property in favour of father of the defendant No.1. Further contended that, father of defendant No.1 was looking after him therefore Late.Abdul Majeed S/o Ismail Sab executed will in his favour out of love and affection. Having said so, as per

the contents of WILL goes to show that, one Fathima W/o Abdul Majeed also put signature as attesting witnesses, to the will. Whereas, as per the pleadings the defendants specifically contended that, the family members of Late.Abdul Majeed S/o Ismail Sab was residing in the Somawarapet, Coorg District hence it creates doubt with regard suspicious circumstances of execution of will by Late.Abdul Majeed S/o Ismail Sab in favour of Late. C.G. Gurudev. Hence the defendants utterly failed to prove that, Late.Abdul Majeed S/o Ismail Sab executed will out of free state of mind.

22. Apart from documentary evidence let us now discuss with regard to oral evidence of the parties. During the course of cross examination of PW1, the PW1 has denied entire suggestions of learned counsel for defendants. In order to prove their case, the plaintiffs have got examined witnesses PW2 and 3 wherein deposed that, they know the plaintiffs and defendants, the plaintiffs are in possession of the suit schedule property and they are adjacent owners of the land. However, in the cross examination the PW2 admitted that, he does not know the contents of affidavit and he does not know the boundaries of the suit schedule property. Furthermore, the PW3 who is another

independent witness deposed that, the suit schedule property originally belongs to Late.Abdul Majeed S/o Ismail Sab and after his demise the plaintiffs are cultivating the land and in possession of the same as absolute owners. Though the learned counsel for defendants cross examined PW2 and 3 nothing worth is elicited from PW2 and 3.

23. As stated Supra, the defendants have not examined attesting witness to the WILL however got examined the witness as DW2 and the DW2 deposed that, Late.Abdul Majeed S/o Ismail Sab was in possession of the suit schedule property he has leased out the suit schedule property in favour of father of defendant No.1 C.G. Gurudeva. Further deposed that, since Late.Abdul Majeed S/o Ismail Sab was not keeping well the father of the defendant No.1 looking after him therefore, out of love and affection he has bequeathed the suit schedule property in favour of father of defendant No.1 Late. C.G. Gurudeva and as per the will after demise of father, the defendants are in possession of the suit schedule property as absolute owners. During the course of cross examination of DW2 he has admitted that, he do not know whether Late.Abdul Majeed S/o Ismail Sab

has bequeathed the suit schedule property in favour of father of defendant No.1 or not. It is to be noted that, the DW2 deposed that father of plaintiff passed away at Kalenahalli Village however the death certificate produced at Ex.D.5 goes to show that, he dead at Somwarapet Taluk, Kodagu District. The DW2 is not attesting witness to the will the defendants have utterly failed to prove that during the life time of Late.Abdul Majeed S/o Ismail Sab bequeathed the suit schedule property in favour of father of defendant No.1.

24. As stated supra, as per Ex.P.2 to 5 goes to show that, the suit schedule property stands in the name of Plaintiffs and Late.Abdul Majeed S/o Ismail Sab. Admittedly, this is a suit for bare injunction the Plaintiffs need not prove their ownership over the suit schedule property. The defendants admitted the ownership of father of plaintiffs. As aforementioned, the documents produced by the Plaintiffs at Ex.P.2 to Ex.P.5 reveals that the suit schedule property stands in the name of Plaintiffs and Late.Abdul Majeed. The documents produced by the Plaintiffs on record clearly establishes that the Plaintiffs are in possession of the suit schedule property. Further the defendants have utterly failed to prove that, Late.Abdul Majeed S/o Ismail

Sab leased out the suit schedule property in favour of father of defendant No.1 and in turn Late.Abdul Majeed S/o Ismail Sab got bequeathed the suit schedule property under registered WILL at Ex.D.1. The very contention of the Defendants in their written statement suffices this court to hold that, there is interference caused by the Defendants in peaceful possession and enjoyment of the Plaintiffs over the suit schedule property. Therefore, the Plaintiffs through oral and documentary evidence in support of their pleadings have established that they are in possession of the suit schedule property. Furthermore, in the decision reported in;

1990 part 1 KLG Page 536, (Smt. Lakshamma V/s M.P.Krishnappa and Others), wherein, the Hon'ble High Court has held that, it is not necessary to prove the threat is really is in existence and mere interference or apprehension is sufficient to seek injunction.

Coming to the case on hand, as stated supra, the Plaintiffs have proved their possession over the suit schedule property. As such they are entitled for relief of injunction against the defendants. Without much discussion, with these observations **Issue No.1 and 2 are answered in the Affirmative.**

25. **Issue No.3 :-** In view of answering of Issue No.1 and 2 in the affirmative and on preponderance of probabilities, the court is of the opinion that the Plaintiffs are entitled for the relief as sought. Accordingly **Issue No.3 is answered in the Affirmative.**

26. **Issue No.4:-** For the reasons discussed above, this court proceed to pass the following :-

: O R D E R:

The suit of the Plaintiffs is hereby Decreed with costs.

The Defendants, their legal representatives, heirs, successors – in – interest, assigns, employees or any other persons claiming under or through them are hereby restrained by way of permanent injunction from interfering with the suit schedule property by the Plaintiffs.

Draw decree accordingly.

(Dictated to the Stenographer-III directly on the computer, corrected by me and pronounced in open court on this the 29th day of April, 2026)

(Ayishabi.P.Majid)
Prl. Civil Judge & JMFC.,
Hunsur.

ANNEXURE

List of witnesses examined for the Plaintiffs:

P.W.1 : Smt. Abhida
P.W.2 : Sri. Govinda
P.W.3 : Sri. Kareem Khan

List of witnesses examined for the Defendants:

D.W.1 : Sri.Yadugiri
D.W.2 : Sri. Govindegowda

List of documents marked for the Plaintiffs :

Ex.P.1 : Police acknowledgment,
Ex.P.2 and 3 : RTC extract,
Ex.P.4 and 5 : Mutation register,
Ex.P.6 : Grant Certificate.

List of documents marked for the Defendants:

Ex.D1 : WILL dated 10.12.1996,
Ex.D2 and 3 : RTC extract,
Ex.D4 : Mutation register,
Ex.D.5 : Death certificate of Abdul Majeed.

**Prl. Civil Judge & J.M.F.C,
Hunsur.**