



**IN THE COURT OF SENIOR CIVIL JUDGE AND
JMFC, K.R.NAGARA**

**Present : Aravindra B.C., B.A., L.L.B.,
Senior Civil Judge & J.M.F.C.,
K.R.Nagar.**

Dated : This the 02nd day of June, 2026

R.A. No.33/2018

Appellants : 1. Sri. Nagaraju,
S/o Late Javaregowda,
Aged about 50 years.
2. Sri. Ramesha,
S/o Late Javaregowda,
Aged about 48 years.
3. Sri. Jayanna,
S/o Late Javaregowda,
Aged about 45 years.

All are R/at:
Kamenahalli Village,
Kasaba Hobli,
K.R.Nagar Taluk.

(By: Sri. L.V.R., Adv.)

(Plaintiffs in Trial Court)

-V/s-

Respondents: 1. Smt. Chikkamma,
W/o Late Ramaswamy,
Aged about 50 years.



- 2. Smt. Roopa,**
W/o Raghu,
Aged about 28 years,
R/at: Haliyuru Doddakoppal
Chunchanakatte Hobli,
K.R.Nagar Taluk.
- 3. Sri. Hitesha,**
S/o Ramaswamy,
Aged about 26 years.
- 4. Sri. Diwakara,**
S/o Ramaswamy,
Aged about 24 years
Respondent No.1, 3 & 4 are
R/at: Kamenahalli Village,
Kasaba Hobli, K.R.Nagar Taluk.
- (R1 & 3 by: Sri. H.K.C./M.R., Adv.)**
(R2 & 4 Exparte)
(Defendants in Trial Court)

Date of judgment under appeal	: 01.02.2018
Nature of the suit and Order appealed against	: For Declaration and Permanent Injunction
Date of the Institution of the appeal	: 21.03.2018
Date on which the judgment was pronounced	: 02.06.2026
Duration of Appeal	: Year/s Month/s Day/s 08 02 12

(Aravindra B.C.)
Senior Civil Judge and JMFC,
K.R.Nagar.

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

The present Regular Appeal has been preferred by the appellants/plaintiffs against the respondents/defendants being aggrieved by the Judgment and decree passed by the Prl. Civil Judge & JMFC, K.R.Nagar in O.S. No.448/2012 dated: 01.02.2018 having dismissed the suit of the plaintiffs for declaration and Permanent Injunction with respect to the plaint schedule property.

2. The record shows that, the present appeal was dismissed for non-prosecution on 12.03.2020. Further the record shows that, as per order dated 22.07.2025 in Misc. No.1/2022, the present Regular Appeal is restored and registered as its original number

3. The appellants herein were the plaintiffs and the respondents were the defendants before the Trial Court. For the purpose of brevity and convenience, this court



refer the parties in this appeal as per their ranks before the Trial Court.

4. The plaintiffs have filed the suit against the defendants seeking the relief of declaration declaring that, they are the absolute owners and in possession over the plaint schedule property and consequential relief of permanent injunction restraining the defendants or any other persons claiming under them from interfering with the plaintiff's peaceful possession and enjoyment of the plaint schedule property and also prayed to grant such other relief which the plaintiffs is found entitle to.

5. The plaintiffs have described the suit schedule property appended to the plaint. It reads as Under;

ಕೆ.ಆರ್.ನಗರ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ನಾರಾಯಣಪುರ
ಗ್ರಾಮಕ್ಕೆ ಸೇರಿದ ಸರ್ವೆ ನಂ.68/3 ರಲ್ಲಿ ಒಟ್ಟು 1.05 ಖುಷ್ಕಿ ಜಮೀನು
ಮತ್ತು ಸರ್ವೆ ನಂ.68/4 ರಲ್ಲಿ 1.14 ಗುಂಟೆ ಖುಷ್ಕಿ ಜಮೀನು ಮತ್ತು
ಸರ್ವೆ ನಂ.67/3 ರಲ್ಲಿ 5 ಗುಂಟೆ ಖುಷ್ಕಿ ಜಮೀನುಗಳ ಪೈಕಿ 1968 ರ



ಹಿರಿಸ್ಸಾ ಪ್ರಕಾರ 3 ಸರ್ವೆ ನಂ.ಗಳಿಂದ 1.10 ಗುಂಟೆ ಜಮೀನು ವಾದಿಯರ ಮತ್ತು 1 ನೇ ಪ್ರತಿವಾದಿಯ ಗಂಡನಿಗೆ ಸೇರಿದ್ದು ಅದರಲ್ಲಿ 10¼ ಗುಂಟೆ ಜಮೀನನ್ನು 1 ನೇ ಪ್ರತಿವಾದಿಯ ಗಂಡ ಅವರ ಹಿರಿಸ್ಸಾ ಜಮೀನನ್ನು ಮಾರಾಟ ಮಾಡಿದ್ದು ಉಳಿಕೆ 1.00 ಎಕರೆ ಜಮೀನು ವಾದಿಗಳ ಸ್ವಾಧೀನಾನುಭವ ಹೊಂದಿದ್ದು ಅದರ ಚಕ್ಕುಬಂಧಿ:-

ಪೂರ್ವಕ್ಕೆ	:	ರಸ್ತೆ
ಪಶ್ಚಿಮಕ್ಕೆ	:	ಮೋಹನ್ ಕುಮಾರ್ ರವರ ಜಮೀನು
ದಕ್ಷಿಣಕ್ಕೆ	:	ಮೋಹನ್ ಕುಮಾರ್ ರವರ ಜಮೀನು
ಉತ್ತರಕ್ಕೆ	:	ಗ್ರಾಮಶಾಣಿ

Herein after, refer to as suit of schedule property for the purpose of brevity and convenience.

6. The facts of the case as averred in the plaint are that, the suit schedule property is the ancestral and joint family property of plaintiffs and defendants. The same has been acquired by the mother of plaintiffs and Ramaswamy by name, Sannamma who is 2nd wife of Javaregowda under the registered partition deed dated 05.05.1968. After her death, the said Ramaswamy being the elder member of the family, the katha has been transferred in the name of Ramaswamy. Subsequently,



the plaintiffs and Ramaswamy have got divided the suit property and other properties as per Panchayath Palupatti dated 20.02.1995. In pursuance of said Panchayath Paluapptti, the plaintiffs and defendants have got changed the katha with respect to the dry land. But in respect of wet land, the katha has been continued in the name of Ramaswamy. The plaintiffs and defendants have got 1½ guntas of wet land in Sy.No.68/3.

7. Further, the case of the plaintiffs is that Ramaswamy and his children have sold their share in favour of one K.P.Mohankumar S/o K.J.Puttegowda under registered sale deed dated 05.07.2006. The plaintiffs have requested the said Ramaswamy to get change the katha of the wet land in Sy.No.68/3 into their respective shares which they have got partition. The said Ramaswamy promised to request of the plaintiff but,



suddenly he was died on 25.08.2009. After his death, the defendants have illegally changed the katha into their names under Pavathi Varasu. But, the defendants have no right, title or possession over the suit schedule property. The plaintiffs are in possession and enjoyment of the schedule property from the date of Panchayath Palupatti. However, the defendants have tried to interfere with the possession of the plaintiffs over the schedule property. At that point of time, the defendants have assaulted to the plaintiffs. Thereby the plaintiffs have lodged the complaint before the jurisdictional police, the same was registered in CC No.249/2012 and thereafter the said criminal case was compromised between the plaintiffs and defendants. Thereafter, the defendants have trying to interfere with the possession of the plaintiffs. Hence, the cause of action was arose



and filed the suit before the Trial Court for the aforesaid reliefs.

8. Before the Trail Court in response to the suit summons issued to the defendants, the defendant No.1 and 3 have put their appearance through their counsel and filed written statement. Inspite of service of summons, the defendant No.2 and 4 have not appeared before the Trial Court. Hence, they have been placed exparte.

9. In the written statement, the defendants have denied the entire allegations made by the plaintiffs, excepting the relationship of the plaintiffs and defendants as narrated in the plaint. The definite case of the defendants is that the suit schedule property originally belongs to Sannamma. She was acquired the same under partition deed dated 05.05.1968. Further, contended that Ramaswamy and plaintiffs are brothers,



they have orally partitioned the suit schedule property and other properties. In view of oral partition, the katha of the properties effected into their names and the suit schedule property fallen to share of Ramaswamy. The said Ramaswamy was in possession and enjoyment of the said property. After his death, the defendants are in possession and enjoyment of the said property. Further, contended that they have sold the 10¼ guntas in favour of K.P.Mohankumar. Further, contended that the suit of the plaintiffs is barred by limitation and the plaintiffs are not in possession and enjoyment of the schedule property. Upon these grounds, these defendants have prays for dismiss the suit.

10. Based on the rival pleadings of both the parties, the Learned Trial Court has framed the following issues. They read as under;



1. Whether plaintiffs prove that they are the absolute owners in possession of the plaint schedule property ?

2. Whether the plaintiffs prove the alleged interference by the defendants ?

3. Whether plaintiffs are entitled for the relief as prayed ?

4 Whether the suit is barred by law of limitation ?

5. What order or decree ?

11. Before the Trial Court, to substantiate the case of the plaintiffs, the plaintiff No.3 himself has entered into the witness-box and examined as P.W.1 and got marked the 24 documents which are marked at Exs.P1 to P24. The plaintiffs have examined one witness by name, Shambulingappa as PW-2 and closed their side evidence.

12. On the other hand, to rebut the evidence of the plaintiffs, the defendant No.3 is examined as DW-1 and he got marked 12 documents which are marked at Ex.D1 to D12 and closed their side evidence.



13. After closure of the evidence of both sides and after hearing the arguments of learned counsel for the plaintiffs and defendants, the learned Trial Court has answered all the issues negative and Ultimately, the Trial Court has dismissed the suit of the plaintiffs. Feeling aggrieved by the same, the appellants have preferred this appeal on the urged grounds mentioned in the appeal memo.

14. This court has given anxious consideration to the submissions of the both sides. Meticulously perused the Trial Court Records.

15. Having heard the learned counsel appearing for the parties and taking into consideration the grounds urged in the memorandum of appeal, the following points arise for consideration:

- 1. Whether the Trial Court was justified in given findings on issues and holding that the plaintiffs have**



entitled the relief of declaration and permanent injunction ?

- 2. Whether the appellants have made out grounds to allow the application under Order 41 Rule 27 R/w Section 151 of CPC ?**
- 3. Whether the judgment and decree of the Trial Court is erroneous and liable to be interfered with ?**
- 4. What order?**

16. The findings on the above points are as follows:-

Point No.1 : In the Affirmative
Point No.2 : In the Negative
Point No.3 : In the Negative
**Point No.4 : As per final order,
For the following:-**

R E A S O N S

17. **Point No.1 to 3:-** These points are inextricably mixed up with each other. Therefore, this court would like to discuss them together so as to avoid repetition of discussion and confusion.



18. According to plaint averments, the suit schedule property was acquired by one Sannamma under registered partition deed dated 05.05.1968. After her death, the katha of the suit schedule property has been transferred in the name of Ramaswamy who is the husband of defendant No.1 and father of defendant No.2 to 4. Subsequently, the plaintiffs and Ramaswamy were divided the suit schedule property under other properties under Panchayath Palupatti dated 20.02.1995. In pursuance of said Panchayath Palupatti, the plaintiffs and defendants have changed the katha with respect to the landed properties. But, the katha of the wet land remaining in the name of Ramaswamy. After his death, the defendants have illegally changed the katha of the schedule property and sold the 10 $\frac{1}{4}$ guntas in favour of K.P.Mohankumar under registered sale deed dated 05.07.2006. On the other hand, the defendants have



denied the case of the plaintiffs and also denied the Panchayath Paluapatti dated 20.02.1995.

19. It is well principle of the law that, the burden of the fact lies with the party who substantiate asserts in the affirmative issue and not the party denies it. The burden proves lied upon a person who has to be prove the facts and which never shifts. However, the owners of proof shifts, such shifting of owners is a continuous process in the elevation of evidence. Therefore, the burden cast on the plaintiffs have to be proved that, they are the absolute owners of the suit schedule property by virtue of Panchayath Paluapatti dated 20.02.1995 and in possession over the same as on the date of filing the suit.

20. In order to prove the case of the plaintiffs, the plaintiff No.3 got examined himself as PW-1 by filing affidavit. In the affidavit the PW-1 has reiterated the



plaint averments in verbatim. Hence, this court need not reproduce the same once again at this juncture. In addition to his oral testimony, the PW-1 has produced so many as 23 documents which have been marked as Ex.P-1 to P-23. On behalf of the plaintiffs, one witness by name, Shambulingappa is examined as PW-2.

21. On the other hand, the defendants have denied the case of the plaintiffs and contended that there was oral partition took place between the plaintiffs and defendants. In the said oral partition, the suit schedule property and other properties were fallen to the share of Ramaswamy and the katha of the respective shares changed into their names. The said Ramaswamy was in possession and enjoyment of the schedule property till his death. After his death, the defendants have continued to be in possession of the schedule property. In order to prove the same, the defendant No.3 is



examined as DW-1 and he has produced the 12 documents which have been marked at Ex.D1 to D12.

22. Before going to discuss the issues it is worth to rely on the decision of the Hon'ble Apex Court reported in **(2011) 12 SCC 220** in the case of **Rangammal V/s Kuppuswami and Another**, wherein their lordships have clearly observed regarding burden of proof lies on what at para 21. Therefore, it is worth to reproduce the para 21 of the Judgment as here under;

“Para 21: Section 101 of the Evidence Act” which as defines Burden of proof which clearly lays down that;

“Section 101” whosoever desires any court to give judgment as to any legal right or law dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. Thus, the Evidence Act has clearly laid down that the burden of proving fact always lies upon the person who asserts.



Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party.

23. The plaintiffs have filed a suit against the defendants for the relief of declaration and consequential of permanent injunction with respect to the suit schedule property by virtue of unregistered Panchayath Paluapatti dated 20.02.1995. In order to prove the same, the plaintiff No.3 has been examined before the Trial Court as PW-1. He deposed inconsonance with the plaint averments. In support of his oral assertions, he has produced the 23 documents which are marked at Ex.P1 to P23.

24. Now let me discuss the documents produced by the plaintiffs. The Ex.P1 is the original partition deed



dated 05.05.1968. It is undisputed fact is that the suit schedule property and other properties originally belongs to Sannamma who is mother of plaintiffs and husband of defendant No.1. She had acquired the said property under registered partition deed dated 05.05.1968. The defendants have not denied the said partition deed. Therefore, it is not necessary to discuss the said document.

25. The plaintiffs alleges that after the death of Sannamma, there was partition took place between the plaintiffs and husband of defendant No.1 under Panchayath Paluapatti dated 20.02.1995. In the said Panchayath Paluapatti, the suit schedule property has been allotted to the plaintiffs. But, the katha of the schedule property continued in the name of Ramaswamy who is brother of plaintiffs. Admittedly, the plaintiffs have not produced the Panchayath Paluapatti dated



20.02.1995. The plaintiffs have stated that the original Panchayath Paluapatti was in the custody of the defendants. On perusal of the materials available on the record, the plaintiffs have not taken any steps to call for the said Panchayath Paluapatti. According to defendants, there is no Panchayath Paluapatti as alleged by the plaintiffs. As per contention of the defendants, there was oral partition took place between the husband of defendant No.1 and plaintiffs. In the said oral partition, the suit schedule property fallen to share of defendants and also the katha was made out in the name of Ramaswamy.

26. The plaintiffs themselves produced the RTC extracts with respect to the suit schedule property and other properties which marked at Ex.P2 to P15. This court perused the said RTC extracts and which appears that the katha of the property bearing Sy.No.68/3 stood



in the name of Ramaswamygowda and also the katha of the land bearing Sy.No.283 stands in the name of Ramaswamy and the plaintiffs. Further, the record shows that after the death of Ramaswamy, the katha of the suit property mutated in the name of defendants by way of Pavathi Varasu in vide MR. No.13/2011-12. The said Ramaswamy was acquired the property bearing Sy.No.68/3 measuring 1 acre 5 guntas, 68/4 measuring 24 guntas from his father. As per Ex.P17 and P18, the katha of the above said properties mutated in the name of defendants.

27. The plaintiffs have alleged that the defendants have sold the portion of the schedule property in favour of K.P.Mohankumar under registered sale deed dated 05.07.2006. In order to prove the same, the plaintiffs have produced the copy of the sale deed dated 05.07.2006 which marked at Ex.P24. This court perused



the Ex.P24 it appears that the Ramaswamy and his minor children have sold the property measuring $10\frac{3}{4}$ guntas in Sy.No.68/3 in favour of K.P.Mohankumar. The recitals of the said sale deed makes it clear that the Sy.No.68/3 measuring 1 acre 5 guntas has fallen to share of Ramaswamy and out of total extent, $10\frac{3}{4}$ guntas sold to the K.P.Mohankumar. Admittedly, the plaintiffs have not been challenged the said sale deed before any competent authority. Further, the plaintiffs have not made party to K.P.Mohankumar in the suit.

28. The documents produced by the plaintiffs itself makes clear that the suit schedule property originally belongs to Sannamma and she acquired the same under Ex.P1/partition deed. Further, it makes clear that the katha of the schedule property mutated in the name of Ramaswamy and after his death, the said katha has been mutated in the name of defendants herein. The



land bearing Sy.No.68/3 measuring 1 acre 5 guntas fallen to the share of Ramaswamy. During his lifetime, himself and defendant No.3 and 4 have sold the measuring $10\frac{3}{4}$ guntas in favour of K.P.Mohankumar. In the said sale deed, the boundaries shown to Northern side as property of Nagaraju who is none other than plaintiff No.1 before the Trial Court. Therefore, the said boundaries clearly indicates that there was oral partition took place between the plaintiffs and Ramaswamy. In the said oral partition the suit schedule property fallen to share of Ramaswamy. Admittedly, the plaintiffs have not denied the boundaries mentioned in the sale deed.

29. Further, important aspect is to be noted that there was partition between the plaintiffs and Ramaswamy under Panchayath Paluapatti dated 20.02.1995. Further, it is stated that in pursuance of Panchayath Paluappatti, the katha of the dry land



mutated in their names. But, the katha of the wet land i.e., suit schedule property continued in the name of Ramaswamy. The plaintiffs have not explained why they have not mutated the katha with respect to the wet land properties. On perusal of the Ex.P16 which is mutation register extract it appears that the katha of the suit property mutated in the name of Ramaswamy. As per Ex.P16, the Ramaswamy acquired the property from their father Javaregowda. The plaint averments is contrary to the Ex.P16.

30. Further, the plaintiffs have stated that on 20.02.1995 there was partition took place between the plaintiffs and defendants in the presence of K.T.Kemparamu, Shivanna and Srinivasa who are also put their signature to the Panchayath Palupatti as attesting witnesses. Admittedly, the plaintiffs have not produced the Panchayath Palupatti. Even, for collateral



purpose the plaintiffs have not been examined to the attesting witnesses to prove the alleged partition dated 20.02.1995. The PW-2 has deposed that on 20.02.1995, Panchayath Paluapatti entered into between the plaintiffs and one Ramaswamy. He admits that he was not attesting witness to the document. Hence, the evidence of the PW-2 is not helpful to the case of the defendants.

31. On the other hand, the defendants have taken defence that there was oral partition took place between the plaintiffs and defendants. But, the defendants have not stated anything when the said oral partition acted upon. However, the katha of the schedule property mutated in the name of Ramaswamy and after his death, the katha of the suit schedule property was mutated in the name of defendants. The documents produced by both parties established that the suit schedule property



acquired by one Sannamma under Ex.P1/partition deed and Ramaswamy and defendant No.3 and 4 have sold the 10³/₄ guntas in Sy.No.68/3. Further, the record shows that K.P.Mohankumar is in possession of the said property. But, the plaintiffs have not questioned the sale deed standing in the name of K.P.Mohankumar.

32. Further, the appellants have filed application under Order 41 Rule 27 R/w Section 151 of CPC for production of additional documents in order to adduce additional adduce. It is well settled that Rule 27 under Order 41 of the CPC enumerates the circumstances in which the appellate court may admit additional evidence, whether oral or documentary in appeal, and they are, i) Where the lower court has improperly refused to admit evidence which ought to have been admitted, or ii) Where such additional evidence was not within the knowledge of the party or could not, after the



exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or
iii) Where the appellate court requires such evidence either to enable it to pronounce judgment, or for any other substantial cause.

33. As a general rule, in terms of sub-rule (1) of Rule 27, the appellate court is to decide an appeal on the evidence led by the parties before the trial court and is not to admit additional evidence for the purpose of disposal of an appeal. Section 107 (1) (d), however carves out an exception to the general rule, and empowers the appellate court to take additional evidence or requires such evidence to be taken subject to the conditions laid down in Rule 27 of Order 41.

34. It is further settled that the basic principles of admission of additional evidence is that the person



seeking admission of additional evidence should be able to establish that with the best efforts such additional evidence could not have been adduced at the first instance. The Hon'ble Apex Court held in the case of ***Shivajirao Nilangekar Patil Vs. Mahesh Madhav Gosavi and Others*** reported in ***1987 (1) SCC 227*** wherein, the Hon'ble Apex Court made observation in the above cited judgment that the basic principle of admission of additional evidence is that the person seeking the admission of additional evidence should be able to establish that with the best efforts such additional evidence could not have been adduced at the first instance. Secondly the party affected by the admission of additional evidence should have an opportunity to rebut such additional evidence. Thirdly that additional evidence was relevant for the determination of the issue.



35. In support of their application, the appellants have intended to produce the unregistered Pachayath Palupatti dated 20.02.1995. Perused record, it could be seen that the plaintiffs have already relied the said document before the Trial Court and the Trial Court has considered the said document. Hence, the question of giving additional evidence does not arise. Hence, the application filed the appellants under Order 41 Rule 27 R/w Section 151 of CPC is not maintainable.

36. Therefore, the Trial Court has rightly considered the oral and documentary evidence produced by the plaintiffs and has also come to the conclusion that the plaintiffs have failed to prove their case. Therefore, this court do not find any factual or legal error being committed by the Trial Court by dismissing the suit of the plaintiffs. Hence, the judgment and decree of the Trial Court is in accordance with law and facts. Hence,



the judgment and decree of the Trial Court do not require any interference by this court. **Accordingly, this court answered point No.1 is in the Affirmative and the point No.2 and 3 are in the Negative.**

37. **Point No.4**:- As a result of findings of this court given on point No.1 to 3 stated supra, the appeal filed by the appellants fail and is liable to dismissed with cost. Accordingly, this court proceed to pass the following:-

ORDER

The Regular Appeal filed by the appellants/plaintiffs under Order 41 Rule 1 R/w Section 151 of CPC is dismissed with cost.

The judgment and decree so passed by the Prl. Civil Judge and JMFC, K.R.Nagar in OS No.448/2012 dated 01.02.2018 is confirmed.

Draw decree accordingly.



Send the Trial Court records along with copy of the Judgment passed in this appeal, well in advance to the Trial Court.

(Dictated to the stenographer directly on computer, computerized by her, corrected by me and then pronounced in the open court on the 02nd day of June - 2026)

**(Aravindra B.C.)
Senior Civil Judge and JMFC,
K.R.Nagara.**