

KAMS500002242023



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : Sri. Kamalaksha D., B.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 1st day of June 2026

R.A./12/2023

Appellant

Revamma,
aged 55 years,
D/o Doddagandappa,
Muddahalli Village,
Kasaba Hobli,
Nanjangud Taluk.

(By Sri.M.J.Sethu Rao, Adv.)

-V/s-

Respondents

1. Basavanna,
aged 59 years,
S/o Mallappa,
2. Mahadevappa – dead by L.Rs.
- 2a) Mangalamma,
aged 40 years,
W/o late Mahadevappa,

Muddahalli Village,
Kasaba Hobli,
Nanjangud Taluk.

- 2b) Pooja,
aged 24 years,
W/o Mahesha,
D/o late Mahadevappa,
Kurahatti Village, Kasaba Hobli,
Nanjangud Taluk.
3. Shivananjamma,
aged 50 years,
D/o Doddagandappa,
4. Swamy, aged 35 years,
S/o late Mallanna,
5. Basanth, aged 32 years,
S/o late Mallanna,
6. Naganna, aged 65 years,
S/o Puttappa,
7. Shivanna, aged 38 years,
S/o Mahadevappa,

All are residing at
Muddahalli Village,
Kasaba Hobli,
Nanjangud Taluk.

(By Sri. M.Mahesh, Adv. for R.1, 2(a & b)
R.3 to 7 - absent)

Date and nature of the appeal	Appeal against the judgment and decree in O.S.No.5/2013 dated 13.02.2023 passed by the II Addl. Civil Judge and J.M.F.C., Nanjangud.		
Date of Institution of the appeal	06.03.2023		
Date of pronouncing the judgment	01.06.2026		
Duration of Appeal	Years	Months	Days
	03	02	25

J U D G M E N T

The defendant No.1 of O.S.5/2013 is the appellant herein challenging the judgment and decree passed by the II Addl. Civil Judge and JMFC, Nanjangud, dated 13.02.2023.

2. The parties are referred to as they were before the trial court in suit for the sake of convenience.

3. Brief facts of the case are as follows:

The suit schedule property is originally ancestral property. The grand father of the plaintiffs had purchased the suit schedule

property on 27.01.1930 from one Subbaraya. Subsequently the khatha of the suit schedule property was got changed in the name of the plaintiffs' grandfather, after his death, the father of the plaintiffs changed the khatha of the schedule property. Now the plaintiffs are in possession and enjoyment of the suit schedule property and they paying tax of the schedule property regularly. The purchased property totally measures 7 acres 31 guntas, out of which plaintiffs' grandfather had purchased the half share of the property. Thereafter the said survey number of the purchased property re-phoded and renumbered as Survey No.190/3(b), 192(5), 192/1(B), 191/1(B) and the property khatha was transferred into the name of plaintiffs jointly. It is further submitted that, the above said facts are well-known to the defendants, but they continuously interfering into the

possession of the plaintiffs. But the defendants are noway concerned to the schedule property. But they are not ready to stop their interference to the schedule property. In this regard many panchayaths were held, but failed. The plaintiffs have given numerous police complaints against the defendants, but went in vain. Therefore, the plaintiffs filed the suit for the relief of declaration to declare the plaintiffs as owners of the schedule property and permanent injunction.

4. In pursuance of suit summons, the defendants No.1, 3 and 5 appeared before the court through their counsel. Defendants No.2 and 4 remained absent and placed exparte. Defendant No.1 filed written statement, the defendants No.3 and 5 have adopted the written statement of defendant No.1. In the written statement the contested defendants denied the claim of the

plaintiffs saying that the suit schedule property is not the ancestral property, but it is the ancestral property of the grandfather of defendant No.1 by name Boraiah S/o Basappa and till that date the defendant No.1 is in possession and enjoyment of the suit schedule property. The grand father of the defendant No. 1 had mortgaged the suit schedule property in favour of Subbappa @ Chinnaswamappa, subsequently the possession of the mortgaged property recovered by grandfather of the 1st defendant. The revenue documents of the suit schedule property were standing in the name of his grandfather and thereafter that was changed in the name of the 1st defendant and now the defendant No. 1 is possession and enjoyment of the suit schedule property. The plaintiffs created the revenue documents of the suit schedule property to their names by deleting the name of the grandfather of the 1st defendant. The changed khatha of the property does not give any property right in favour of the plaintiffs, because they got entered their names in the revenue documents by creating

documents. Hence, the defendants No.1, 3 and 5 prayed to dismiss the suit.

5. On the basis of the above rival pleadings, the trial Court has framed the following issues:

1. Whether the plaintiff proves that he is the absolute owner in lawful possession and enjoyment of the suit schedule property as on the date of filing of the suit?
2. Whether the plaintiff further proves the alleged interference by the defendants?
3. Whether the plaintiff is entitled for the reliefs claimed?
4. What order or decree?

6. Before the trial Court, in order to get the relief the plaintiff No.1 is examined as P.W.1 and a witness as P.W.2 and got marked 20 documents as Exs.P.1 to 20. The evidence of the defendants' side was closed as per the counsel for the defendants, because he submitted that no evidence of the defendants is to be required. Hence, the defendants have not tendered evidence.

7. On merits the Trial Court decreed the suit of the plaintiffs. Then the defendant No.1 being aggrieved litigant approached before this court by filing appeal on the following grounds:

According to the appellant/defendant No.1 the judgment of the Trial Court is totally absence of consideration of the documents, because the Trial Court has not considered the documents in proper manner, so it suffers with lack of evaluation of the documentary evidence. The Trial Court has failed to consider the true value of the documents of the plaintiffs and has failed to consider that the documents and depositions of the parties to the suit and has failed to consider that the plaintiffs have failed to establish the allegations properly. The Trial Court has failed to consider the value that is to be attached to the statements of the plaintiffs in the evidence, wherein he has admitted that details available in Exs.P.18 and 19 which are the revenue sketch maintained by the Survey Department clearly shows that the plaintiffs have given wrong boundaries to the suit property. There is no discussion regarding this aspect in the entire judgment. Since the

boundaries given in the schedule are different from the boundaries, that is evident from the Atlas copies Exs.P.18 and 19, the court cannot pass an effective decree unless proper verification of the documents. It is further made ground that the plaintiffs have filed a suit stating that he is a second generation legal heir of the alleged original owner of the property. The plaintiffs have not filed the suit on behalf of the entire legal heirs of the alleged owner, but has filed it in his individual capacity. During the cross-examination he has stated that there are several other legal heirs of the alleged original owner. Since the suit is a declaratory suit, all the persons who are allegedly having title are necessary parties and since they are not impleaded even after this fact is brought to the notice of the plaintiffs, the suit ought to have been dismissed for non-joinder of necessary parties. Apart from this the Trial Court has come to the erroneous conclusion that in case the defendants do not lead evidence on their side, it is fatal to their defence. But the Trial Court has lost sight of the cardinal principle of law that the person who comes to the court has to clearly prove his case and not depend on the evidence of the

other side. Further the Trial Court has to take note of the legal aspects which are apparent on the face of the case like non-joinder of necessary parties, non-joinder of all the properties, limitation, non-payment of requisite court fee, inadmissibility of documents etc., even if the rival parties keep silent on those aspects. This court is a court of law and the judgment is to be rendered as per law. Hence, prays to allow the appeal and dismiss the suit.

8. After service of notice, the respondents 1, 2 (a and b) appeared before the court through their counsel. Respondents No.3 to 7 did not appear before the court and remained absent.

9. Trial Court Records are received.

10. Heard. Perused the pleadings, evidence and materials placed on record.

11. In view of the grounds urged by the appellant, the points that arise for consideration are:

1. Whether the appellant/ defendant No.1 proves that the Trial Court has

not properly considered the documents of the plaintiffs?

2. Whether the suit of the plaintiffs ought to have been dismissed for non-joinder of necessary parties?

3. Whether the suit of the plaintiffs can be decreed for failure of the defendants' evidence?

4. What order?

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

Points No.1 & 2: In the affirmative

Point No.3 : In the negative

Point No.4 : As per the final order for the following:-

REASONS

13. **Points No.1 to 3:** These points are taken together for common discussion. As mentioned in the body of the judgment the suit was filed for declaratory relief to declare the plaintiffs as owners of the suit schedule property coupled with permanent injunction against the defendants preventing them from interfering

into the suit schedule property bearing Sy.No.190/3(B) – 32 guntas, 192/5- 16 guntas, Sy.No.192/1(B) – 4 guntas and Sy.No.191/1(B) measures 2 guntas situated at Muddahalli Village of Nanjangud Taluk. At the outset, I would like to take discussion on the point of non-examination of the defendants' evidence. For which it is proper to refer the judgment of the Hon'ble Supreme Court reported in **AIR 2007 SC 2025** in the case of **Adivekka Vs. Hanamavva**, in that matter the Hon'ble Supreme Court has held that, ***“Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption under Section 114(g) of the Evidence Act would arise that the case set up by him is not correct.”*** The Hon'ble Supreme Court in the case of **M.M.B.Catholicos Vs. M.P.Athanasius** reported in **AIR 1954 SC 526**, has held that, *plaintiff bound to prove his case even when the defendant fails to prove his case or defence.* So, the non-examination of the defendant in a matter is not fatal to decide the matter in

favour of the plaintiffs, because Sections 101 to 103 of Indian Evidence Act always put burden of proof upon the person who appear before the court for the relief always by a plaintiff or petitioner. Therefore, if non-examination of the defendant in a matter is not fatal to decree the suit and plaintiffs have to discharge their burden by leading their evidence.

14. Again the Hon'ble Supreme Court in the case of **State of M.P. Vs. Ushadevi** reported in **(2015) 8 SCC 672** has held that, ***“Where the plaintiff had instituted the suit for declaration of title and possession, it has been held by the Supreme Court that burden of proof under Section 101 of the Evidence Act rests on the plaintiff to prove his title and entitlement to possession. Plaintiff cannot succeed on any alleged weakness in title possession of the defendant.”*** So, the Hon'ble Supreme Court made it clear that, where the plaintiff had instituted the suit for declaration of title and possession, it has been held by the Hon'ble Supreme Court that

burden of proof under Section 101 of Evidence Act rests on the plaintiff to prove his title and entitlement to possession, the plaintiff cannot succeed on any alleged weakness on the possession of the defendant. The same principle of law has been discussed by the Hon'ble Supreme Court in other cases like **Union of India Vs. Vasavi Co-operative Housing Society Limited** reported in **(2014) 2 SCC 269**, **T.K.Mohammed Abulbucker Vs. P.S.M.Ahamed Abdul Khader** reported in **AIR 2009 SC 2966**. So, it may be concluded to this point saying that non-examination of the defendant as witness is not a fatal and that witness cannot be treated as triumph card to decree the suit of the plaintiffs.

15. It is a settled law that in a suit for declaration of title, the burden is heavily lies on the plaintiff, the plaintiff is not supposed to depend upon the weakness in the case set up by defendant. For which below mentioned decisions of the Hon'ble Supreme Court may be considered, these dictum are:

Moran mar Basselious Catholicos Vs. The Most Rev. Mar Poulouse Athanasius and Others reported in **AIR 1958 SC 31** and another judgment in between **Union of India Vs. Vasavi Cooperation Housing Society Limited** reported in **AIR 2014 SC 937**, the Hon'ble High Court in the judgment in between **Paturu Sundaraiah Suri Vs. Ranganayakamma and another** and also in between **A.Panjurangam since deceased per L.Rs., and others Vs. Darshanala Swamy since deceased per L.Rs., and others**, reported in **2011 Law Suit (A.P.) 643**. In that matter, it is discussed that,

“In a suit for declaration, heavy burden rests upon the plaintiff to prove the title, particularly when it is in respect of an item of immovable property. There are certain known sources of acquisition of title, such as by way of succession, purchase, assignment from the Government, or even by perfecting the title by adverse possession. To prove the title, what becomes essential is to identify the erstwhile owner of the property and then to explain the manner in which it has accrued to the plaintiff. Even if there exists certain missing links in the chain of events that connect

the original owner and plaintiff, the title can be said to have been established, in the absence of any stronger claim by the defendant".

16. The Hon'ble Supreme Court in the case of **Nagar Palika, Jind v. Jagat Singh, Advocate (1995) 3 SCC 426**, has held as under:

"the onus to prove title to the property in question was on the plaintiff. In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the plaintiff. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit."

"The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited."

So, the Hon'ble Supreme Court in many decided matters held that initial burden is always on the plaintiff to prove his title and manner of acquire of the property etc.

17. The learned counsel for the appellant/defendant No.1 argued that the suit of the plaintiffs ought to have been dismissed for non-joinder of necessary parties, because all family members of the plaintiffs have not been made as parties in the declaration suit. So, the learned counsel for the appellant/defendant No.1 referred the cross-examination of P.W.1 to concrete the said defence, which runs as follow:

"ನನ್ನ ತಾತನಿಗೆ ಒಬ್ಬಳೇ ಹೆಂಡತಿ, 5 ಜನ ಹೆಣ್ಣುಮಕ್ಕಳು ಹಾಗೂ ಇಬ್ಬರು ಗಂಡು ಮಕ್ಕಳು. ನನ್ನ ತಂದೆ ಹೆಸರು ಮಲ್ಲಪ್ಪ, ನನ್ನ ಚಿಕ್ಕಪ್ಪನ ಹೆಸರು ಕೆಂಪಣ್ಣ, ನನ್ನ ಅತ್ತೆಯವರ ಹೆಸರು ಗೌರಮ್ಮ, ಬಸಮ್ಮ, ಮಲ್ಲಮ್ಮ, ಬೋರಮ್ಮ ಹಾಗೂ ಸಣ್ಣಮರಮ್ಮ. ನನ್ನ ಚಿಕ್ಕಪ್ಪ ಕೆಂಪಣ್ಣನಿಗೆ ಹೆಂಡತಿ ಮಕ್ಕಳು ಇದ್ದಾರೆ. ನನ್ನ ಸೋದರ ಅತ್ತೆಯರ ಗಂಡ, ಮಕ್ಕಳು ಇದ್ದಾರೆ. ನನ್ನ ತಂದೆ, ಚಿಕ್ಕಪ್ಪ ಹಾಗೂ ಅತ್ತೆಯವರು ನಮ್ಮ ಕುಟುಂಬದ ಸ್ವತ್ತುಗಳನ್ನು ಭಾಗ ಮಾಡಿಕೊಂಡಿಲ್ಲ, ಈ ಸಂಬಂಧ ಯಾವುದೇ ದಾಖಲೆ ಇಲ್ಲ. ನನ್ನ ತಂದೆ ಹಾಗೂ ನನ್ನ ಚಿಕ್ಕಪ್ಪ ಕೆಂಪಣ್ಣನ ನಡುವೆ ಸ್ವತ್ತುಗಳ ವಿಭಾಗವಾದ ಬಗ್ಗೆ ಕೂಡ ಯಾವುದೇ ದಾಖಲೆಗಳು ಇಲ್ಲ. ದಾವಾ ಸ್ವತ್ತು

ನನ್ನ ತಾತನ ಆಸ್ತಿ ಆಗಿದ್ದು ನೀವು ಈ ದಾವೆಯಲ್ಲಿ ನಿಮ್ಮ ಚಿಕ್ಕಪ್ಪ ಹಾಗೂ ನಿಮ್ಮ ಅತ್ತೆಯವರನ್ನು ಪಕ್ಷಗಾರರನ್ನಾಗಿ ಮಾಡದೇ ಇರುವ ಕಾರಣ ಈ ದಾವೆ ವಜಾ ಆಗಬೇಕು ಎಂದರೆ ಸಾಕ್ಷಿಯೂ ಹೌದು ಅವರನ್ನು ಪಕ್ಷಗಾರರನ್ನಾಗಿ ಮಾಡಿಲ್ಲ ಎಂದು ಉತ್ತರಿಸುತ್ತಾರೆ.”

So, the above referred cross-examination of P.W.1 clearly indicates that the grandfather of P.W.1 had only one wife and they got five daughters and two sons. Mallappa is the father of P.W.1, Kempanna is the younger paternal uncle of P.W.1. Gowramma, Basamma, Mallamma, Boramma and Sannamaramma are the sisters of the father of P.W.1. Kempanna had got wife and children. Similarly the sister of father of P.W.1 are also surviving family members. The suit schedule properties are not divided in between the father of the plaintiffs and his younger paternal uncle. There is no document as to prove the partition of the family properties of the father of the plaintiffs and his brother and sisters. So, the learned counsel for the appellant argued that, the suit of the plaintiffs definitely not maintainable for non-joinder of necessary parties.

Basavanna and Mahadevappa are the plaintiffs. Admittedly P.W.1 in the cross-examination has deposed as below:

ನೀವು ಈ ದಾವೆಯಲ್ಲಿ ನಿಮ್ಮ ಚಿಕ್ಕಪ್ಪ ಹಾಗೂ ನಿಮ್ಮ ಅತ್ತೆಯವರನ್ನು ಪಕ್ಷಗಾರರನ್ನಾಗಿ ಮಾಡದೇ ಇರುವ ಕಾರಣ ಈ ದಾವೆ ವಜಾ ಆಗಬೇಕು ಎಂದರೆ ಸಾಕ್ಷಿಯೂ ಹೌದು ಅವರನ್ನು ಪಕ್ಷಗಾರರನ್ನಾಗಿ ಮಾಡಿಲ್ಲ ಎಂದು ಉತ್ತರಿಸುತ್ತಾರೆ.

So, the admission of P.W.1 clearly demonstrated that the remaining family members are not made as parties.

18. Now the question arises that whether the remaining family members in undivided family properties are necessary parties in declaration suit. The learned counsel for the defendants before the Trial Court relied on a judgment of the Hon'ble Supreme Court decided in Civil Appeal No. 5755/2011 in the case of *Moreswar Yadavarao Mahajan Vs. Vyankatesh*. In that matter the Hon'ble Supreme Court discussed that,

" It can thus be seen that what has been held by this court is that for being a necessary party, the twin test has to be satisfied. The

first one is that there must be right to some relief against such party in respect of the controversies involved in the proceedings. The second one is that no effective decree can be passed in the absence of such party".

19. But the learned counsel for the appellant argued that the Trial Court failed to apply the principle of law decided in the above matter in proper manner. The judgment of the Hon'ble Supreme Court and below mentioned judgments may enough to decide the said question of law raised by the defendants. For which this court taken the shelter of many decided matters of the Hon'ble Supreme Court; among those decisions, I would like to take some decisions of the Hon'ble Supreme Court like below:

Chinthamani Ammal Vs. Nandagopal Gounder and another reported in 2007 (4) SCC 163, in that matter the Hon'ble Supreme Court held that, this presumption underscores why suits involving succession or title declaration treat all co-sharers as interconnected.

Without their inclusion, courts cannot fully adjudicate shares and rights. So, in a suit for declaration of title or rights based on succession, all co-sharers or co-owners are generally necessary parties. Courts consistently hold that failing to implead them renders the suit defective, potentially leading to dismissal for non-joinder. The same principle of law has been discussed by the Hon'ble Supreme Court in the case of **Md. Mohammad Ali (Dead) by L.Rs. Vs. Jagadish Kalita** reported in AIRONLINE 2003 SC 832, **Shivshankara Vs. H. P. Vedavyasa Char** reported in **2023 LiveLaw (SC) 261**. Again the Hon'ble Supreme Court in the case of **Anil Kumar Singh Vs. Shivnath Mishra Alias Gadasa Guru** reported in **AIRONLINE 1994 SC 245**- in the said cases it is held that, *“Such suits determine the entire estate's rights. Absent parties' interests cannot be conclusively settled without their participation. For instance:- Purchasers of undivided shares before a partition suit are necessary parties.”* So, in many citations the Hon'ble Supreme Court held that missing of necessary parties in title suit

creates great difficulty to draw final decree, because effective final decree cannot be drawn if necessary persons are not made as parties.

20. So, the argument of the learned counsel for the appellant/ defendant No.1 can be considered saying that, in a declaration suit especially regarding property, all co-sharers of family with a legal interest in the properties are generally necessary parties. Failure to include them can make the suit defective as a binding decree cannot be passed in their absence. P.W.1 in the cross-examination very clearly admitted in the evidence that all family members of father's family are not made as parties to the suit. The suit schedule properties are not divided as on the date of filing of suit, but the Trial Court has not considered the said principle of law though P.W.1 has deposed the said fact in his evidence. But it is pertinent to consider that the defendants have not taken the defence of non-joinder of necessary parties in their written statement. I have very carefully gone through the

contents of written statement as to know that the defendants have taken defence of non-joinder of necessary parties or not, but the defendants never taken such defence in the written statement. The principle of law that, one person shall be allowed to prove the fact if it is pleaded. Therefore, a litigant shall not be allowed to prove the fact if such fact has not been pleaded. In the written statement the defendants have not pleaded the fact of non-joinder of necessary parties. However, P.W.1 has categorically deposed in the cross-examination that he has not made family members of his father as necessary parties. It may be said that the defendants went beyond the defence to prove the non-pleaded fact, because the fact of non-joinder of necessary party is not pleaded, but the Trial Court has allowed the defendants to prove the said fact. But the cross-examination of P.W.1 may be considered to say that their suit is not maintainable for non-joinder of necessary parties, because the defendants in the written statement have explained that the suit schedule properties are joint

family properties, then it may be presumed that, the plaintiffs ought to have made all members of their father's family as necessary parties, because the suit schedule properties are not divided as on the date of filing of suit. Hence, the said contention of the defendants that non-joinder of necessary parties can be considered to dismiss the suit. Therefore, the judgment of the Hon'ble Supreme Court referred by the defendants in Trial Court ought to have been considered to decide the matter on question of non-joinder of necessary parties.

21. The learned counsel for the appellant/defendant No.1 also argued that the plaintiffs have not given proper boundaries of the suit schedule property. The defendants' defence in this regard described as below:

ಈ ಒಂದು ಸುಳ್ಳು ದಾಖಲಾತಿಯ ಆಧಾರದ ಮೇಲೆ ವಾದಿಗಳು ಈ ದಾವೆಯನ್ನು ಹೂಡಿರುತ್ತಾರೆ. ದಾವಾ ಪೆಡ್ಯೂಲ್‌ನಲ್ಲಿರುವ ಚೆಕ್ಕುಬಂಧಿ ಕೂಡ ಹಸಿ ಸುಳ್ಳಿನಿಂದ ಕೂಡಿದ್ದು, ಈ ದಾವೆಯನ್ನು ಸೃಷ್ಟಿ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ಸುಳ್ಳು ಚೆಕ್ಕುಬಂಧಿ ನೀಡಿ ದಾವೆ ಹಾಕಿರುತ್ತಾರೆ. ಆದುದರಿಂದ ದಾವೆಯು ಉರ್ಜಿತವಾಗತಕ್ಕದ್ದಲ್ಲ.

So, the learned counsel for the appellant argued that the suit of the plaintiffs ought to have been dismissed in this count also. P.W.1 in the cross-examination has deposed as below:

ದಾವಾ ಷೆಡ್ಯೂಲ್‌ನಲ್ಲಿ, ನೀವು 4 ಜಮೀನುಗಳಿಗೂ ಸೇರಿ ಒಂದೇ ಚೆಕ್ಕುಬಂದಿ ತೋರಿಸಿದ್ದೇನೆ, ನೀವು ತೋರಿಸಿರುವ ಚೆಕ್ಕು ಬಂದಿ ಸರಿಯಲ್ಲ, ಎಂದರೆ ಸಾಕ್ಷಿಯು ಹೌದು ಎನ್ನುತ್ತಾರೆ.

So, the said assertion of P.W.1 in the cross-examination concretes that the boundaries explanation given in the suit pertaining to the schedule properties is also not correct and away from truth.

22. I have glanced the judgment of the Trial Court. The Trial Court has decreed the suit saying that, *“On perusal of RTC it clear that, earlier the suit schedule property katha were stood in the name of the plaintiffs' grandfather and their father and now the suit schedule property Katha standing in the name of the plaintiffs jointly. The Ex.P.14 is the Sale Deed dated 12.12.1929 in respect of suit schedule property purchased by plaintiffs’*

grandfather. As per the said sale deed, the grandfather of the plaintiffs had purchased totally 2 acres 23 guntas property in the survey No. 191, 192/2, 193/3, 190/4 from one Subbaraya. After the death of plaintiffs' grandfather the suit schedule properties katha changed in the name of the plaintiffs' father as per Ex.P15. After the death of plaintiffs father the suit schedule properties Katha are changed in the name of the plaintiffs as per Ex.P16 and the plaintiffs have paid tax in respect of suit schedule as per the Ex.P17. Ex.P18 and 19 are the Atlas utar copies. As per the Ex.P18 and19, the suit schedule property was subsequently re-phoded. The Ex.P20 is the Agriculture pass book.” So, this is the reason of the Trial Court to decree the suit.

But the Trial Court has not considered the said judgment relied by the defendants saying that the position of law discussed by the Hon'ble Supreme Court in the above case is not applicable to this matter.

23. Admittedly R.T.Cs. are not good documents in declaratory suit for declare a person as owner of the schedule properties. The plaintiffs have explained that, their grandfather Basappa purchased the schedule properties through registered sale deed dated 27.01.1930. Ex.P.14 is the certified copy of sale deed dated 27.01.1930. The said document is produced to prove that the grandfather of the plaintiffs had purchased the suit schedule properties through this document. However, the plaintiffs have not explained the reason for non-production of original sale deed. As per Section 62 of Indian Evidence Act, highest evidentiary value may be given on original document. Therefore, party seeks a relief on the basis of document must produce the original document that is called primary evidence. Primary evidence as defined in Section 62 of the Evidence Act is highest class of proof, meaning the original document itself is produced for the court's inspection. It is deemed a most believable best evidence and must be presented before any secondary evidence if original documents are

not available. However, production of original documents may be avoided if original document is multiple parts, bulk in nature etc. So, secondary evidence can be introduced if believable reason is given for non-production of original document. In the present matter the plaintiffs have not given the reason for non-production of original document. The plaintiffs have also not explained the whereabouts of the original document saying that whether the original sale deed is misplaced from their possession etc., but the Trial Court has not considered the said facts before decreeing the suit. The produced R.T.Cs. of the plaintiffs' side may enough to prove their possession upon the suit schedule properties. However, the suit of the plaintiffs ought to have been dismissed for non-production of original sale deed, production of Ex.P.14 may be considered as best secondary evidence if reason for non-production is introduced. Secondly non-joinder of necessary parties. Thirdly the boundaries of the suit schedule properties admittedly not correct according to the plaintiffs only.

But the Trial Court has not considered all these points in its judgment, however decreed the suit saying that the R.T.Cs. and Ex.P.14 document may enough to decree the suit and decreed. Secondly the Trial Court has held that the defendants have not introduced evidence on their behalf. However, as mentioned above, non-examination of the defendants in a suit is not fatal, because always initial burden of proof is only upon the person who approached the court for the relief. In the present matter the plaintiffs have not proved the above mentioned facts in their evidence. Therefore, the suit of the plaintiffs ought to have been dismissed. Hence, **points No.1 and 2** are answered **in the affirmative** and **point No.3 in the negative**.

24. **Point No.4:** In view of the findings on the above points, I proceed to pass the following :-

ORDER

The appeal filed by the appellant/
1st defendant is allowed. No order as
to cost.

Consequently, the judgment and decree passed in O.S.No.5/2013 dated 13.02.2023 by the II Addl. Civil Judge and JMFC, Nanjangud, is set aside.

Suit of the plaintiffs is dismissed.

Draw decree accordingly.

Send the trial court records along with copy of the judgment.

(Dictated to the stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in open Court on this the 1st day of June 2026).

(Kamalaksha D.)
Senior Civil Judge & JMFC,
Nanjangud.