

KAMS500032022022



**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 August 2026

O.S./214/2022

Plaintiffs

1. Sannamma W/o late P.Kalappa,
D/o late Sotthana Madegowda,
aged about 78 years,
residing at House No.481,
Kumara Krupa,
18th Cross, Postal Colony,
Vishweshwara Nagar,
Mysuru-08.
2. Gowramma D/o late Puttamalamma
@ Bhoomithayi
W/o late Madegowda,
aged about 55 years,
residing at Heggadahalli Village,
Kasaba Hobli,
Nanjangud Taluk.
3. Mahadevi D/o late Puttamalamma
@ Bhoomithayi
W/o Mariswamy,
aged about 44 years,

residing at Kongalli Village,
Hullahalli Hobli,
Nanjangud Taluk.

4. Sakamma D/o late Puttamamma
@ Bhoomithayi
W/o Mariswamy,
aged about 41 years,
residing at Konanuru Village,
Kavalande Hobli,
Nanjangud Taluk.
5. Nagaraju S/o late Puttamamma
@ Bhoomithayi,
aged about 40 years,
residing at Heggadahalli Village,
Kasaba Hobli,
Nanjangud Taluk.

(By Sri. K.S.Mruthunjaya, Adv.)

-V/s-

Defendants

1. Basavanna S/o late Madegowda
and Siddamma,
aged about 59 years,
2. Nanjammani W/o Basavanna,
aged about 45 years,
3. H.B.Kavitha D/o Basavanna,
W/o D.Basavaraju,
aged about 27 years,
4. Mahadevaswamy H.B.
S/o Basavanna,
aged about 25 years,

5. Prakash H.B. S/o Basavanna,
aged about 23 years,

defendants No.1 to 5 are
residing at Heggadahalli Village,
Kasaba Hobli,
Nanjangud Taluk.

6. Somanna K.P. S/o late Puttegowda,
aged about 55 years,
residing at No.99,
Kempisiddanahundi Village,
Chikkaiahnachathra Hobli,
Nanjangud Taluk.

(By Sri. C.Somaiah – Adv. for D.1 to 5
Sri. M.Mahesh – Adv. for D.6)

Date of institution of the suit	26.08.2022		
Nature of suit	Declaration and permanent injunction		
Date of commencement of Trial	04.09.2024		
Date on which the judgment was pronounced	01.08.2026		
Duration of suit	Years	Months	Days
	03	11	06

J U D G M E N T

The suit is filed for the relief of declaration of title of
'A' and 'B' schedule properties in favour of the plaintiffs

and permanent injunction pertaining to the schedule properties bearing Sy.No.261/4 measures 16 guntas out of 1 acre 39 guntas including 1 gunta kharab and Sy.No.261/4 measures 15 $\frac{3}{4}$ guntas out of 1 acre 39 guntas situated at Heggadahalli village of Nanjangud Taluk.

2. Brief facts of the case of the plaintiffs are as follows:-

The original propositus Sotthana Madegowda had five daughters i.e., Puttamamma @ Bhoomithayi, Sannamma (1st plaintiff), Siddamma, Puttamadamma @ Kundamma and Sakamma. Sotthana Madegowda died long back and his daughter Puttamamma @ Bhoomithayi and Sakamma also demised long ago. The plaintiffs No.2 to 5 are the daughters of Puttamamma D/o Sotthana Madegowda. The 1st plaintiff is the daughter of Sotthana Madegowda.

It is further submitted that, the suit schedule properties are situated in Heggadahalli Village of Nanjangud Taluk. The said properties were family properties of

plaintiffs. One suit of O.S.59/2008 was filed for the relief of partition and separate possession. In the said suit the present schedule properties are shown as 'C' schedule property. The said suit was decided on 17.12.2011 in favour of the daughters of Sotthana Madegowda. The suit schedule property of Sy.No.261/4 is having 1 acre 39 guntas of extension and the said survey number was the subject matter of O.S.59/2008 i.e., 'C' schedule property. In the said partition the 1st plaintiff got 16 guntas out of 1 acre 39 guntas and plaintiffs No.2 to 5 were got 15 $\frac{3}{4}$ guntas as per the decree. Thereafter FDP 14/2011 came to be registered and the commissioner's report was accepted, then the beneficiaries were given share in the schedule properties as per the decree of O.S.59/2008. It is further submitted that, such being the case the defendants No.1 to 5 knowing this situation sold out 'A' and 'B' schedule properties in favour of the 6th defendant through registered sale deed dated 07.05.2022. Subsequently the 6th defendant changed the khatha of the purchased property through M.R.H.74/2021-22. The said fact came to the knowledge of the plaintiffs

when they obtained the certified copy of sale deed through online on 18.08.2022. It is further submitted that the defendants No.1 to 5 were the parties in O.S.59/08 and F.D.P.14/2011. The said sale deed was executed by them in favour of the 6th defendant is only to engulf and snatch the property rights of the plaintiffs. The defendants No.1 to 5 had no right to execute the sale deed in favour of the 6th defendant, because the said property or sold out property was not their property because it was allotted property of the plaintiffs. Therefore, the plaintiffs have filed the suit for declaration and permanent injunction.

3. Suit summons were duly served. The defendants appeared before the court through their respectively counsel. Only the 6th defendant filed written statement. In the written statement he denied the entire facts of the suit saying that the said facts have been encrypted in the plaint only to deceive the defendants. He has taken defence that originally the schedule properties belonged to the 6th defendant, thereafter the said property was acquired by K.I.A.D.B. for industrial purpose. It is further taken

defence that the 6th defendant had landed property in Kempisiddanahundi Village. The said property was acquired by K.I.A.D.B., after receiving the compensation, the 6th defendant purchased the suit schedule property from defendants No.1 to 5. The 6th defendant has intimated the plaintiffs before purchase of the suit schedule properties from the defendants No.1 to 5. He had paid sufficient sale consideration amount to the defendants No.1 to 5. It is further submitted that he does not know the dispute between the plaintiffs and defendants No.1 to 5. He has proclaimed and published in the village about the purchase of the suit schedule properties and the said transaction is known to the plaintiffs also. The plaintiffs having knowledge of the said transaction has kept silent for long time. Now they filed the suit only to trouble the defendant No.6. Hence, he says that he is the bonafide purchaser of the suit schedule properties and he prays to dismiss the suit.

4. Based on the above pleadings the following issues have been framed:

- 1 Whether the plaintiff No.1 proves that she is the absolute owner of the suit 'A' schedule property ?
- 2 Whether the plaintiffs No.2 to 5 prove that they are the absolute owners of the suit 'B' schedule property?
- 3 Whether the plaintiffs prove that they are in possession and enjoyment of the suit 'A' and 'B' schedule properties as alleged?
- 4 Whether the plaintiffs prove the alleged interference?
- 5 Whether the defendant No.6 proves that he is the bonafide purchaser of the property as alleged?
- 6 Whether the plaintiffs are entitled for declaration as sought for ?
- 7 Whether the plaintiffs are entitled for permanent injunction as sought for?
- 8 What order or decree?

5. In order to get the relief the G.P.A. holder of the plaintiffs by name K.Kumara is examined as P.W.1 and got marked 13 documents as Exs.P.1 to 13. On the other hand, the defendant No.6 is examined as D.W.1, but no document is marked on his behalf.

6. Heard and perused the pleadings, evidence and materials placed on record.

7. The answer to the above issues is as follows:

Issues No.1 & 2	:	In the affirmative
Issue No.3	:	In the negative
Issue No.4	:	In the negative
Issue No.5	:	In the negative
Issue No.6	:	In the affirmative
Issue No.7	:	In the negative
Issue No.8	:	As per final order for the following

REASONS

8. **Issues No.1, 2 and 5:** These issues are taken together for common discussion to avoid repetition. The claim of the plaintiffs that, they are the absolute owners of the suit schedule properties obtained through court decree passed in O.S.59/2008, subsequently in FDP No.14/2011. P.W.1 in the chief-examination has reproduced the facts of the plaint. The trustworthy of P.W.1 is questioned in the

cross-examination. P.W.1 says the reason for non-appearance of the plaintiffs personally, because some of the plaintiffs are aged one and some of the plaintiffs have been living away from the jurisdiction of this court. However, Order III Rule 2 of C.P.C. permits to lead evidence through a general power of attorney on behalf of the litigation. Therefore, the evidence of P.W.1 is legal and legible as per Order III Rule 2 of C.P.C. P.W.1 in the cross-examination has deposed as below:

ನ್ಯಾಯಾಲಯದ ಆದೇಶವಾದ ನಂತರ ಆಸ್ತಿಯ ಸ್ವಾಧೀನತೆಯನ್ನು ನಾವು ಪಡೆದುಕೊಂಡಿಲ್ಲ. ನ್ಯಾಯಾಲಯದ ಆದೇಶದ ನಂತರ ಪಹಣಿಯಲ್ಲಿ ನನ್ನ ಹೆಸರು ಬಂತು ಎಂದರೆ ಸರಿ.

So, P.W.1 says that even after decree of the court in partition suit, they have not taken the possession of the schedule properties. It is suggested to P.W.1 that, the 6th defendant purchased the property other than the properties of the plaintiffs, but P.W.1 denies it.

9. To prove the ownership in a declaration suit, one must rely on a strong chain on registered title deeds, backed by continuous physical possession and official

revenue records. One must establish title that is superior to the defendants. So, in declaration suit the person who seeks ownership must produce title deeds such as sale deed, gift deed, partition deed, Will or power of attorney documents. These documents are considered to be legible documents for title suits. Consequence of all previous ownership transfers to demonstrate a clear and unbroken history of the properties title. Section 34 of Specific Relief Act 1963 provides the principle of filing of suit for declaratory relief. The initial burden is always upon the plaintiffs to prove their title and they must explain to the court that how they acquire the title of the questioned property.

10. P.W.1 has furnished 13 documents. As mentioned supra, the say of the plaintiffs that initially one suit of O.S.59/2008 was filed for the relief of partition and separate possession. Ex.P.1 is the general power of attorney given by the plaintiffs to P.W.1 to represent in court of law on their behalf. Its validity has already

discussed above. Ex.P.2 is the family sketch. Rest of the documents are revenue documents and consideration of evidentiary value of those documents at this stage is not pertinent. Ex.P.6 is the certified copy of plaint in O.S.59/2008 filed by one Shivanna and others. In that suit there were 15 defendants, among them Sannamma, Gowramma, Mahadevi, Sakamma, Nagaraju were the defendants No.1 and 11 to 14. The said suit was filed for the relief of partition and separate possession pertaining to 12 items of the properties. The property of Sy.No.261/4 measures 1 acre 39 guntas was the schedule property in O.S.59/2008. That suit was decreed on 17.02.2011, the plaintiffs were ordered to be given share in the properties shown in the schedule of O.S.59/2008 that includes property of Sy.No.261/4 measures 1 acre 39 guntas. The said property is the subject matter of the present suit. Ex.P.8 is the certified copy of preliminary decree proceedings, which shows the 'C' schedule property means the schedule property of the present suit was ordered to be divided among the beneficiaries and certified copy of

FPD14/2011 marked as Ex.P.12 herein demonstrated the division of joint family properties among the legal heirs of Sottanna Madegowda. Item No.3 property in Sy.No.261/4 of Heggadahalli Village was divided into three parts and shares were allotted to beneficiaries. Among them, respondent No.1 in FDP 14/2011 is Sannamma, she is the plaintiff herein was given 16 guntas of property and 15 $\frac{3}{4}$ guntas properties were jointly given to the respondents No.11 to 14 in F.D.P.14/2011, they are the plaintiffs No.2 to 5 in the present suit. So, the plaintiffs have successfully made out the method by which they acquire the schedule properties of present suit. In conclusion, it may be said that the plaintiffs got the suit schedule properties through partition suit filed in O.S.59/2008 followed by FDP NO.14/2011. Ex.P.13 is the sketch submitted by the commissioner in that matter.

11. Now the question arises that whether the court decree can be considered as title decree for the declaratory relief. A suit can be decreed for ownership and title based

on a final decree in partition suit. However, if the exact properties boundaries were not clearly specified in the final decree a simple stand alone injunction suit is not maintainable; the plaintiff must specifically seek a declaration of title and recovery of the possession. In the present matter the plaintiffs have asked for the relief of declaration and injunction. A final decree in partition suit crystallizes the specific share of the property and physically divides it by metes and bounds. It acts as a formal instrument of title, replacing the previous joint title.

12. The purchaser means the 6th defendant examined himself as D.W.1. He says that he purchased the schedule property on 07.05.2002, however D.W.1 mentioned wrong date of purchase as 07.05.2002. According to him he purchased the schedule properties from defendants No.1 to 5 for valuable consideration. His trustworthiness is also questioned in the cross-examination. D.W.1 in the cross-examination admitted the sale deed, then it was marked as Ex.P.9 upon confrontation. D.W.1 pleaded his ignorance to

know the proceedings of O.S.59/2008 followed by FDP 14/2011 ended on 28.06.2016. D.W.1 further says in the cross-examination as below:

ದಾವಾ ಆಸ್ತಿ ಖರೀದಿಸುವ ಪೂರ್ವದಲ್ಲಿ ಗ್ರಾಮದಲ್ಲಿ ತಿಳಿಸಿದ್ದು
ಅದು ವಾದಿಯರಿಗೆ ಗೊತ್ತಿಲ್ಲ. ಕ್ರಯದ ಪೂರ್ವದಲ್ಲಿ ವಾದಿಗಳಿಗೆ
ನೋಟೀಸ್ ಕೊಟ್ಟು ಅವರ ತಕರಾರು ಇದೆ ಎಂದು ನಾನು
ತಿಳಿದುಕೊಂಡಿಲ್ಲ. ಯಾವುದೇ ಪತ್ರಿಕೆ ಪ್ರಕಟಣೆಯನ್ನು ಸಹ ನೀಡಿಲ್ಲ.

So, evidence of D.W.1 clearly fortifies that he did not intimated the plaintiffs about the purchase of the property before sale transaction and he has also not given notice to the plaintiffs, similarly he has not given any paper publication prior to purchase of property. So, the 6th defendant cannot be treated as bonafide purchaser, because he has not complied very mandatory requirements before purchase of suit schedule properties. Hence, he failed to prove that he is a bonafide purchaser of suit schedule properties. D.W.1 means the 6th defendant though claims to be the bonafide purchaser has not produced the very required document of sale deed dated 07.05.2022. The 6th defendant must produce the said sale

deed, because mere oral evidence is not enough to prove the status of the particular person in a litigation.

13. Now the question arises that whether Ex.P.9 document can be concluded in favour of the defendant No.6 saying that it is a registered document and the registration carries constructive notice to the entire world, because Section 3 of Transfer of Property Act provides that the purpose of registration of document is to bring its existence to the knowledge of the entire world. Therefore, registration of a document can be treated as constructive notice to whole world. However, now question arises that whether registration of Ex.P.9 sale deed in favour of the 6th defendant may enough to legalize his purchase of the schedule properties from defendants No.1 to 5. Interestingly, the defendants No.1 to 5 have not appeared before the court and they have not taken any defence on their behalf.

14. The Hon'ble Supreme Court in the case of **Grasim Industries Limited Vs. Agarwal Steel** reported in **2010**

(1) **SCC 83** has held that, *“In our opinion, when a person signs a document, there is a presumption, unless there is proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signatures thereon, otherwise no signature on a document can ever be accepted.”* So, the Hon'ble Supreme Court in the above mentioned case said that signature found in registered document can be accepted as a true signature of person who signed it before understanding the contents of such document. But in the present matter the defendants No.1 to 5 being the so called sellers did not appear before the court. The Hon'ble High Court of Karnataka in the case of **S.Ravichandra Vs. M/s Elements Development Consultants, Bengaluru, 2018 Cri.L.J.4314 (Kar)**, has held that, *“Mere marking of a document cannot be said to be the proof of said document. The document has to be proved in accordance with law and the same has to be appreciated in order to ascertain the genuineness of the document with other materials available on record.”* So, the Hon'ble High Court of Karnataka has held that mere production of

document is not enough to prove its contents. In the present matter the plaintiffs have chronologically establish their title how they acquire the schedule properties. The materials of certified copy of earlier suit of O.S.59/2008 are the genuine, believable and constructive documents to establish their title over the suit schedule properties. The recitals of said document have not been rebutted by the 6th defendant who is only the contested defendant herein. The said documents are associated with other documents and those documents are alive documents to prove the title of the plaintiffs over the schedule properties. The plaintiffs have discharged their burden of proof. Then the burden shifts upon the defendants especially contested 6th defendant, he failed to discharge his onus by providing believable evidence. As mentioned above, the plaintiffs have chronologically established their title over the suit schedule properties. Ex.P.9 sale deed shall not be treated as valid sale deed in favour of the 6th defendant, because admittedly he has not followed the very mandatory requirement as “bonafide purchaser”. Therefore, he should

have given public notice reached to the plaintiffs. He has not given any paper publication to the knowledge of the general public. Therefore, his sale transaction with defendants No.1 to 5 shall not be legalized, definitely his evidence dilutes his contention of bonafide purchaser. Therefore, **issues No.1 and 2** are answered **in the affirmative** and **issue No.5 in the negative**.

15. **Issues No.3 and 4:** The plaintiffs claimed that they are in possession and enjoyment of 'A' and 'B' schedule properties shown in the plaint. Admittedly, General Power of Attorney holder of the plaintiffs has deposed that the plaintiffs have not made any attempt or taken steps to take the possession of allotted property in O.S.59/2008. At the cost of repetition, I would like to re-refer the cross-examination of P.W.1. The said portion runs as hereunder:

"ನ್ಯಾಯಾಲಯದ ಆದೇಶವಾದ ನಂತರ ಆಸ್ತಿಯ ಸಾಧೀನತೆಯನ್ನು
ನಾವು ಪಡೆದುಕೊಂಡಿಲ್ಲ."

So, it shows that the plaintiffs are not in possession of the schedule properties at present or as on the date of filing of suit. Ex.P.3 is the R.T.C. of Sy.No.261/4, it is the R.T.C. of the suit schedule property. The 9th column of the R.T.C. demonstrates the possession of the property in the hands of Basavanna who is none other than the 1st defendant herein. So, the latest R.T.C. of the schedule property indicates the absence of possession of the plaintiffs over the suit schedule properties. The criteria for grant of permanent injunction are: firstly lawful possession as on the date of filing of the suit and secondly interference of the counter part of the plaintiffs. In the present matter the plaintiffs are not able to establish their possession over the suit schedule properties as on the date of filing of suit, then any act of the defendants cannot be treated as illegal unless establishment of the possession of the schedule properties in the name of the plaintiffs. The plaintiffs have also not produced revenue documents like R.T.Cs. to establish their possession. The latest R.T.C. of Ex.P.10 establishes the present possession of the schedule

properties in the hands of Somanna, who is none other than the 6th defendant. However, the sale transaction of the suit schedule properties in between defendants No.1 to 5 and 6 shall not be legalized, because defendants No.1 to 5 had no right to sell the suit schedule properties in favour of the 6th defendant. The defendants No.1 to 5 have also not appeared and deposed evidence to explain the method by which they acquired the suit schedule properties. Ex.P.10 R.T.C. confirms the present possession of the schedule property in the hands of the purchaser. Hence, the plaintiffs failed to establish their possession over the schedule properties. Hence, **issues No.3 and 4** are answered **in the negative**.

16. **Issues No.6 & 7:** The declaratory relief can be extended in favour of the plaintiffs, because they have established their title over the suit schedule properties, because they got it through partition suit of O.S.59/2008 followed by F.D.P.14/2011. Hence, their title over the schedule properties can be presumed to be true as per the requirement of Section 34 of Specific Relief Act. However,

as discussed in issues No.3 and 4 their possession over the schedule properties has not been proved. Therefore, **issue No.6** is answered **in the affirmative** and **issue No.7 in the negative**.

17. **Issue No.8:** In view of findings on above issues, this Court proceeds to pass the following:-

ORDER

The suit of the plaintiffs is partly decreed with cost. It is declared that the plaintiffs are the owners of the suit schedule properties bearing Sy.No.261/4 measures 16 guntas in the name of the 1st plaintiff and 15^{3/4} guntas in the same survey number in respect of the remaining plaintiffs.

Suit of the plaintiffs in respect of permanent injunction is hereby dismissed.

Draw decree accordingly.

(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 August 2026)

(Kamalaksha D.)
Senior Civil Judge, Nanjangud.

ANNEXURE**List of witnesses examined for the plaintiffs :-**

P.W.1 - K.Kumar

List of documents marked for the plaintiffs :-

Ex.P.1 - General power of attorney
Ex.P.2 - Genealogy tree
Ex.P.3 - R.T.C. extract of Sy.No.261/4
Ex.P.4 - M.R.extract No.MRH74/2021-22
Ex.P.5 - Encumbrance certificate
Exs.P.6 to 8- Certified copies of plaint, judgment and
decree of O.S.59/2008
Ex.P.9 - Copy of sale deed dated 07.05.2022
Ex.P.10 - R.T.C. extract of Sy.No.261/4
Ex.P.11 - M.R.extract No.MR T110/2022-23
Ex.P.12 - Certified copy of petition and order in
F.D.P.14/2011
Ex.P.13 - Certified copy of commissioner's report
submitted in F.D.P.14/2011

List of witnesses examined for the Defendants :-

D.W.1 - Somanna K.P.

List of documents marked for the Defendants:-

Nil

Senior Civil Judge,
Nanjangud.