

KAMS600002352024



O.S./42/2024

**IN THE COURT OF THE SENIOR CIVIL JUDGE AT
PERIYAPATNA**

**Present : Sri.Raju.M.,
M.A., LL.B.,
Senior Civil Judge,
Periyapatna**

Dated: 2nd Day of April 2026

OS.No.42 of 2024

* * *

Plaintiff;

Sri.B.S.Ramachandra s/o Late Sannegowda,
Age: 57 years, r/o No.93, Aanechowkuru Road,
Periyapatna Town and Taluk,
Mysuru District.

(By Sri.TSM, Advocate)

Versus

Defendant;

Smt.Gayathri w/o Appanna
Age: 65 years, B.M.Road,
Koppa Village & Post,
Periyapatna Taluk,
Mysuru District.

(By Sri.BC, Advocate)

Date of Institution	20.02.2024
Nature of the Suit	Possession, current and future mesne profits.
Date of recording of evidence	04.09.2024
Pronouncement of judgment	02.04.2026
Total duration	YY MM DD 02 01 12

***Senior Civil Judge,
Periyapatna.***

J U D G M E N T

The plaintiff has filed this suit to direct the defendant to deliver the vacant possession of ½ guntas of land out of 24.12Gs as mentioned in the suit schedule and for current and future mesne profits.

2. The plaint averments in brief is as under;

One N.K.Pemmaiah s/o N.B.Kuttappa was the owner in possession of the land bearing Sy.No.19 of Koppa Village, Haranahalli Hobli, Periyapatna Taluk who sold the same in favour of Sri.B.P.Manjunath s/o

Late Puttappa Shetty, resident of Bylakuppe Village, Periyapatna Taluk by executing a registered sale deed dated: 19.04.1991 and revenue records were mutated into his name by virtue of MR.No.5/91-92.

3. It is further averred that an area measuring 24.12Gs was bifurcated out of 4As 36Gs of the above said property and assigned new survey number as 19/11 vide MR.No.T6/2019-20 and it has been sold to the plaintiff herein by the said B.P.Manjunatha for valid consideration by executing a registered sale deed dated: 30.01.2021 and revenue records were mutated into the name of the plaintiff by virtue of MR.No.H5/2020-2021 dated: 05.03.2021 and he is in possession of the said property along with his wife and children.

4. It is further averred that certain mistakes were crept in the registered sale deed dated: 30.01.2021 and

they were corrected by executing a rectification deed dated: 05.04.2023. Therefore, by virtue of aforesaid registered sale deed dated: 30.01.2021 and rectification deed dated: 05.04.2023, the plaintiff has acquired absolute right, title and interest over the aforesaid property.

5. It is further averred that the defendant owns the property measuring 1.12Gs in Sy.No.19/3 of Koppa village which was situated abutting to the certain portion of the aforesaid property of the plaintiff. The defendant taking undue advantage of the absence of the plaintiff has encroached an area measuring 1/2Gs (suit schedule property) out of the aforesaid property of the plaintiff and put up a shed like structure in that area. The plaintiff protested the illegal act of defendant and requested the defendant to redeliver the actual possession of the suit schedule property to him but the

defendant failed to do so by dodging the matter. On filing of application by the plaintiff the survey department has conducted an haddubastu survey by issuing prior notice dated: 17.10.22 to the defendant and in the said survey the illegal encroachment of the suit schedule property by the defendant is confirmed. Without any manner of right, the defendant is in illegal and unlawful possession of the suit schedule property. Hence, the suit.

6. After service of suit summons, the defendant appeared before the Court and filed the written statement denying the alleged extent of encroachment of land i.e., the suit schedule property and flow of title in the name of plaintiff and further contended that she had purchased the said property prior to plaintiff's purchase of the same. Further it is contended that the allegation of encroachment is not supported by any

document or sketch, flaunting of haddubast survey is only with the desire of grabbing the defendant's property. Hence, the suit of the plaintiff is a fabricated story and denied the other plaint averments. Among these grounds, the defendant prayed to dismiss the suit.

7. Following issues were framed;

1. Whether plaintiff prove that he is absolute owner of the Sy.No.19/11 measuring 24.12Gs and out of which the defendant have encroached $\frac{1}{2}$ Gs?

2. Whether plaintiff is entitled for the relief sought for?

3. What order or decree?

8. In order to prove the case, the plaintiff got examined himself as P.W.1 and got marked Ex.P1 to P7 documents. He also got examined Sri.Ravindra, Surveyor, Office of ADLR Office, Periyapatna. Inspite of

granting sufficient opportunity the defendant did not cross-examine Pw.1 and 2 and also did not adduce defense evidence.

9. Heard arguments.

10. Answer to the above issues are as under;

Issue-1 : In the affirmative

Issue-2 : In the negative

***Issue-3 : As per the final order
for the following;***

REASONS

11. **Issue No.1:** It is the case of the plaintiff that he has purchased the suit schedule property through a registered sale deed dated: 30.01.2021 and revenue records were mutated into the name of the plaintiff by virtue of MR.No.H5/2020-2021 dated: 05.03.2021. Thereafter a rectification deed dated: 05.04.2023 was executed by vendor of the plaintiff in order to rectify the mistakes crept in the above said sale deed. Therefore, by virtue of aforesaid registered sale deed dated:

30.01.2021 and registered rectification deed dated: 05.04.2023, the plaintiff has acquired absolute right, title and interest over the aforesaid property. But the defendant has encroached 1/2 Gs of land out of the suit schedule property.

12. The plaintiff in support of his case has produced the digitalised copy of the registered sale deed dated: 30.01.2021, through which the plaintiff has purchased the suit schedule land bearing Sy.No.19/11 measuring 24.12Gs from one Manjunath.B.P. and his family members. After purchase of the property by the plaintiff the vendor of the property has also got executed the registered rectification deed dated: 05.04.2023 through which the boundaries of the suit schedule properties has been rectified. As per the digitalised copy of the registered sale deed dated:24.03.2010, B.P.Manjunatha who is the vendor of the plaintiff had purchased the

land in Sy.No.19 measuring $1 \frac{3}{4}$ Gs. As per Ex.P4 RTCs, 24.12 Gs of land in suit survey number 19/11 is in the name of the plaintiff who got changed the khatha as per Mutation marked at Ex.P5. As per Ex.P6 RTC, the defendant is having 1.12Gs of land in Sy.No.19/3 situated at Koppa Village, Haranahalli Hobli, Periyapatna Taluk. Ex.P7 is the copy of the notice issued by the survey authority and survey sketch and report prepared by the survey authority.

13. On going through the documents produced by the plaintiff it is found that the plaintiff has purchased 24.12Gs of land in Sy.No.19/11 as mentioned in the plaint schedule. Pw.1 is not at all cross-examined on behalf of the defendant.

14. According to the plaintiff, the defendant has encroached $1/2$ Gs of land (suit schedule property) in

Sy.No.19/11 totally measuring 24.12Gs. The plaintiff in order to prove the alleged encroachment has got examined one Ravindra, Surveyor, Office of the ADLR, Periyapatna. Pw.2 in his chief-examination has deposed that on the basis of the application filed by the plaintiff through Mojini software to their head office at Bangalore, Pw.2 was allotted to do the survey work. Accordingly he issued notice to the adjacent land owners of the suit schedule property and visited the suit schedule property on 18.08.2022 but on that day the adjacent land owners made galata, hence it was not possible to conduct the survey. Therefore, once again he fixed the date to conduct the survey on 19.09.2022, with the police help. Accordingly the witness caused the notice to the concerned parties through registered post and one Mahadeva has filed objections to the survey work but failed to produce the documents with regard to the same within the stipulated time of 7 days. Hence,

the Pw.2 conducted the survey of the suit schedule property on 17.10.2022 and prepared mahazar but the adjacent owners refused to sign the said mahazar. After conducting the survey the witness found that the land owner of Sy.No.19/3 i.e., the defendant herein has encroached $\frac{1}{2}$ Gs of land out of suit survey number.

15. Pw.1 and 2 are not cross-examined on behalf of defendants. Hence, there is no material on record to discard the documentary as well as oral evidence of Pw.1 and Pw.2. Therefore, it is clear that the plaintiff is the absolute owner of the suit schedule property and the defendant has encroached the same to an extent of $\frac{1}{2}$ Gs. Therefore issue No.1 is answered ***in the affirmative.***

16. Issue No.2: The plaintiff, in the prayer column of the suit has sought only the relief of recovery of vacant

possession of the suit schedule property and he has not sought for the relief of declaration of title. The plaintiff has sought for recovery of possession of encroached area which is not mentioned separately by furnishing boundaries. Now the question arises whether the Court can decree the suit for recovery of possession without declaration of title of the suit schedule property. Here, I intend to refer Section-34 of the Specific Relief Act which reads thus;

“ Discretion of court as to declaration of status or right.-Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek

further relief than a mere declaration of title, omits to do so”.

In this case the defendant has denied the plaintiff's right over the suit property. Hence, the plaintiff could have filed the suit for declaration of his right/title over the suit property but he did not sought such relief.

17. In this regard this Court has relied upon the decision of the Hon'ble Supremment Court in **2008 AIR SCW 2692** in the case of **Anathula Sudhakar v. P. Buchi Reddy** wherein it has been held that;

“where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction; however, where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession,

necessarily the plaintiff will have to file a suit for declaration, possession and injunction”.

Admittedly the plaintiff is in possession of ½ gunta which is encroached by the defendant. As per the above citation the plaintiff ought to have filed the suit for declaration of title and recovery of possession of the encroached portion but the plaintiff did not pray for declaration of title. Without prayer it is not possible grant the relief of declaration of title. In this regard I refer the judgment of the Hon'ble Supreme Court in **Civil Appeal No.6325-6326/2015** in the case of **Akellalalith V/s Konda Hanumanth Rao & another**, decided on 28.7.2022 wherein it has been held that

“It is settled law that relief not found on pleadings should not be granted. If a Court considers or grants a relief for which no prayer or pleading was made

depriving the respondent of an opportunity to oppose or resist such relief, it would lead to miscarriage of justice”.

In view of the above principle of law laid down in the above said decision, it is pertinent to note here that the encroachment portion is not mentioned separately. If the encroachment portion is not mentioned separately with its boundaries it is very difficult to issue delivery warrant. For this reason also it is not possible to decree the suit partially. Therefore issue No.2 is answered ***in the negative.***

18. Issue No.3: In view of findings on issue Nos.1 & 2 this Court proceeds to pass the following;

ORDER

Suit of the plaintiff is dismissed.

No order as to costs.

Draw decree accordingly.

(Dictated to Stenographer directly on computer, typed by her, corrected by and then pronounced in the open Court by me on this the 02.04.26).

sd/-
(Raju.M.)
Senior Civil Judge
Periyapatna

A N N E X U R E

List of witnesses examined on behalf of plaintiff:

Pw.1 : Sri.Ramachandra
Pw.2 : Sri. Ravindra

List of documents marked on behalf of plaintiff:

Ex.P1 : Digitalised Copy of Reg.Sale Deed
Ex.P2 : Digatalised Copy of Rectification Sale Deed
Ex.P3 : Digatalised Copy of Registered Sale Deed
Ex.P4 : RTC
Ex.P5 : Mutation
Ex.P6 : RTC
Ex.P7 : Copy of Notice

List of witnesses examined on behalf of defendants:

Nil

List of documents marked on behalf of defendants:

Nil

sd/-
Senior Civil Judge
Periyapatna.