

KAMS710005702013



**IN THE COURT OF I ADDITIONAL CIVIL JUDGE AND JMFC AT  
T.NARASIPURA**

**Dated this the 5<sup>th</sup> day of June 2026**

Present: **Smt.Niveditha N.**, B.A.L., LL.B, LL.M.,  
**I Additional Civil Judge & JMFC., T.Narasipura.**

**O.S./114/2013**

**Plaintiff**

: Basavarajappa,  
S/o Late Gurubasappa @ Marigandappa,  
Aged about 61 years,  
R/at Yaraganahalli Village, Muger  
Hobli, T.Narasipura Taluk.

**(By Sri.S.J., Advocate)**

**V/s**

**Defendants**

: 1. The Chief Secretary,  
Zilla Panchayath, Near New Court  
Building, Mysore City.

2. The Panchayath Development Officer,  
Karuhatti Grama Panchayath, Karuhatti  
Village, T.Narasipura Taluk.

3. Puttaswamappa,  
S/o Late Puttamadappa,  
Aged about 70 years,

## OS.114/2013

R/at Yaraganahalli Village, Mugar  
Hobli, T.Narasipura Taluk.

(D1 Ex-parte,  
D2 By Sri.A.P.S., Advocate,  
D3 By Sri.T.V.P., Advocate)

Nature of the Suit : Declaration, Mandatory Injunction,  
Possession

Date of the commencement of recording of the evidence : 06/02/2020

Date on which the judgment was pronounced : 05/06/2026

Total duration : Years Months Days  
03 00 08

### JUDGMENT

1. **Relief:** The plaintiff has filed the suit seeking for the reliefs of declaration, mandatory injunction and possession in respect of the suit schedule properties.

#### **2. A Schedule:**

Sy.No.14/2 and ALN No.157/80-81 measuring 11.45 guntas, bounded on East by: Site of the extent of 20x30 feet, with Hullar and floor building of the 3<sup>rd</sup> defendant and remaining portion of land in 'A' schedule, West by: Drain and sites of Maribasavegowda and others, South by: Site of Basavarajappa S/o Mallappa and North by: Road.

#### **B Schedule:**

Encroached portion of site in Sy.No.14/2 and AL No.157/80-81 measuring ExW 16 feet and SxN 31 feet, bounded on East by: Site with Huller and

floor building of 3<sup>rd</sup> defendant, West by: Remaining land in suit 'A' schedule, South by: Remaining portion of suit 'A' schedule land of plaintiff with illegally putup water storage drum and North by: Remaining portion of 'A' schedule property.

Both items of properties are situated at Yaraganahalli Village, Mugar Village, T.Narasipura Taluk.

**3. The brief facts of the plaintiff's case is as follows:**

a. The plaintiff in the plaint has pleaded that he and his father by name Gurubasappa @ Marigandappa were the joint owners in possession of Sy.No.14/2 measuring 12 guntas at Yaraganahalli Village and also other items of properties. During the life time of Gurubasappa @ Marigandappa oral partition was taken place, and as he was aged, who retained to his share a portion of site property at Yaraganahalli Village and half acre of wet land at Kiragasur Village which he had sold away.

b. Further, the plaintiff in old Khatha No.40 and in new Sy.No.14/2 had sold away the land measuring ExW 20 feet and SxN 30 feet in favour of defendant No.3 through a registered sale deed dated 07/04/1981. In the said property, the defendant No.3 has constructed a building wherein he has installed Hullar and Floor Mill.

c. Further, the plaintiff has allotted to his share suit A schedule property in Sy.No.14/2 at Yaraganahalli Village. The plaintiff has looked after his aged parents and performed their burial, hence he is in possession of suit A schedule property, which includes suit B property, which is encroached portion by the defendants No.2 and 3 in suit A schedule property.

d. Further, about 8 months back the defendant No.3 has encroached ExW 20 feet and SxN 31 feet in suit A schedule property on its western side and in the absence of plaintiff, he has constructed a house, the said encroached portion is suit B schedule property. Further on the instigation of defendant No.3, the defendant No.2 has constructed water storage, cement concrete drum on the eastern side of suit A schedule property. Hence, on 09/03/2013 notice has been issued to the defendants, and the said notices have been served on the defendants and on 18/03/2013 defendant No.3 given untenable reply. Hence, this suit.

4. On service of summons, the defendants have appeared before the Court through their advocate. The defendant No.3 filed the written statement.

a. In the written statement, the defendant No.3 has contended that the property bearing Sy.No.14/2 is originally belongs to the father of the plaintiff by name Gurubasappa @ Marigandappa and it was the self acquired property of Gurubasappa @ Marigandappa and he was in possession of the said property. Till today the revenue records are stands in the name of Gurubasappa @ Marigandappa. During his life time, he had executed a registered sale deed dated 07/04/1981 in favour of defendant No.3 in respect of 20x30 feet out of 0.12 guntas in Sy.No.14/2 and khatha also transferred in the name of the defendant No.3. Thereafter, the defendant No.3 has obtained the licence from Grama Panchayath and constructed a building and thereafter he has obtained licence from Karohatti Grama Panchayath and running the Hallar & Floor Mill in the said property. The boundary of the said property is East by: Road, West by: Remaining property in Sy.No.14/2, North by: Remaining

property in Sy.No.14/2, South by: Remaining property in Sy.No.14/2. The defendant No.3 has purchased 20x30 feet in Sy.No.14/2 and constructed building in the said property only. He has not encroached the western side of the above property. The said Gurubasappa @ Marigandappa has 3 children but the plaintiff has not made them as parties to the suit. Hence, the suit is bad from non-joinder of necessary parties. Hence, prays to dismiss the suit with costs.

5. Based on the pleadings and the documents of the parties, my learned predecessor has framed the following:

**ISSUES**

1. Whether the plaintiff proves that, he is the absolute owner of the suit schedule “A” property?
2. Whether the plaintiff proves that, suit schedule “B” property is the part and parcel of the suit schedule “A” property?
3. Whether the Plaintiff proves that, defendant No.2 has illegally constructed the water storage, cement concrete drum in the suit schedule “A” property?
4. Whether the Plaintiff proves that, defendant No.3 has illegally encroached the suit schedule “B” property and put up illegal construction in the suit schedule “B” property?
5. Whether the Plaintiff is entitled for the reliefs as sought for?

6. What order or decree?

6. Heard the argument of both counsels and perused the entire records.

7. My findings on the above issues are as follows:

Issue No.1 : **In the Negative**

Issue No.2 : **In the Negative**

Issue No.3 : **In the Negative**

Issue No.4 : **In the Negative**

Issue No.5 : **In the Negative**

Issue No.6 : As per the final order, the following;

**REASONS**

**8. Issue No.1 to 4:** In order to avoid repetition of facts, these issues are taken up together for discussion.

9. The plaintiff has filed the suit seeking for the reliefs of declaration in respect of A schedule property and mandatory injunction in respect of B schedule property and also for possession. The defendant No.3 has filed the written statement by denying the claim of the plaintiff. The defendants No.1 and 2 have not filed written statement.

10. In order to substantiate claim of the plaintiff, the plaintiff has filed the chief examination affidavit by reiterating the plaint averments and examined as P.W.1 and produced Ex.P1 to 9. Ex.P1 is the certified copy of the sale deed dated 07/04/1981 executed by Gurubasappa in favour of Puttaswamappa for the property measuring 20x30 feet in site No.40. Ex.P2 is the rough sketch. Ex.P3 is the notice issued by the counsel for

the plaintiff to the Chief Secretary of Zilla Panchayath dated 09/03/2013 requesting them to demolish water tank constructed in A schedule property. Ex.P4 to 6 are postal acknowledgments. Ex.P7 is the notice dated 08/09/2012 issued by the counsel for the plaintiff to the counsel for defendant No.3. Ex.P8 is the reply notice issued by the counsel for the defendant No.3 dated 18/03/2013. Ex.P9 is the decree in OS.No.306/2012 filed by the wife of defendant No.3 against the plaintiff herein. P.W.1 was subjected for cross examination.

**11.** Per contra, to prove the defence taken in the written statement, the defendant No.3 has filed the chief examination affidavit by reiterating the written statement contention and examined as D.W.1 and produced Ex.D1 to 4. Ex.D1 is the judgment and decree in OS.No.306/2012 filed by the wife of the defendant No.3 against the plaintiff herein for partition. Ex.D2 is the notice dated 11/10/2012 issued by the counsel for the defendant No.3 to the counsel for the plaintiff. Ex.D3 and 4 are the RPAD receipts and acknowledgment. D.W.1 was subjected for cross examination.

**12.** During the pendency of the case, the plaintiff has filed application seeking for appointment of court commissioner and the court commissioner was appointed and he submitted the report and Taluk Surveyor has examined as C.W.1 and he was subjected for cross examination and he marked commissioner report as Ex.C1.

**13.** The counsel for the plaintiff while arguing has submitted that there is no dispute about A schedule property. B schedule property is a part and

parcel of A schedule property. In the written statement the defendant No.3 has admitted the ownership of the suit schedule property and the plaintiff is ready to give partition as per decree passed in OS.No.306/2012 and as per Ex.P1, the father of the plaintiff was sold the property measuring 20x30 feet in favour of the defendant No.3 and there is no house property in the said sale deed boundary. The defendant No.3 not disputed Ex.P2. Even in the cross of D.W.1 he admits the relationship of the parties and also he admitted no licence for construction of building in his property and in the suit filed by the wife of the defendant No.3 the suit schedule property herein is not included. Therefore, the court commissioner report also shows the encroachment of A schedule property by the defendants and hence he prays to decree the suit.

**14.** The counsel for the defendant No.3 argued that the plaintiff has not produced title and other documents to prove his ownership over suit A schedule property and the plaintiff has not produced documents to show that suit A schedule property was alienated and there is no dispute that the defendant No.3 has purchased the property measuring 20x30 feet from the father of the plaintiff and there is no pleading in the plaint about construction of house in suit A schedule property. Hence, the suit is barred by limitation and in the cross of P.W.1 he admits that about 3-4 years back the defendants have encroached suit A schedule property but in the plaint it is mentioned that the defendants have encroached suit A schedule property in the absence of the plaintiff. Even the court commissioner has also not shown complete measurement of suit A schedule property and also existence of house property of the plaintiff.

Therefore, it is incomplete report. The sketch produced by the court commissioner and also Ex.P2 is contrary and hence prays to dismiss the suit with costs.

**15.** Upon careful perusal and reading of the plaint, written statement, oral and documentary evidence of both the parties, it appears that the plaintiff is seeking relief of declaration over suit A schedule property and mandatory injunction, on the ground that originally suit A schedule property was belonging to his father and after his death, he has succeeded suit A schedule property and he is enjoying the same and the defendants in his absence have constructed water tank. Hence, filed the present suit.

**16.** To prove the above contention, the plaintiff has relied upon Ex.P1 which is the certified copy of sale deed, it discloses that the father of the plaintiff by name Gurubasappa executed the sale deed in favour of the defendant No.3 in respect of property measuring 20x30 feet situated at Yaraganahalli Village and other documents are legal notice and reply notice issued by the counsel for parties. But the plaintiff to prove that the suit schedule property is originally belonging to his father or his father had purchased the same, no documents are produced before this Court. The suit schedule properties are not included in Ex.P9 which is decree passed by this Court in OS.No.306/2012 filed by the wife of the defendant No.3 against the plaintiff herein. The plaintiff has filed the present suit for declaration of suit A schedule property and issues framed upon the plaintiff and the entire burden is on the plaintiff to prove that the suit schedule properties are belonging to the his father and after his

death, he had succeeded the same. Except pleading in the plaint, the plaintiff has not produced title and revenue documents to show that the suit A schedule property was stands in the name of his father and he was paying tax to the concerned authority and after his death, the plaintiff is in possession and enjoyment of the suit schedule property. In cross of P.W.1 he admitted that the suit A schedule property was purchased by his father. But no such sale deed has been produced before the court.

**17.** The counsel for the plaintiff while arguing has submitted that there is no dispute about suit A schedule property and it was admitted by the defendant No.3. Mere admission by the defendant No.3 is not sufficient to accept that the suit A schedule property is belonging to the father of plaintiff. In the absence of documentary evidence, the plaintiff has failed to prove his ownership over suit A schedule property. Therefore, the plaintiff without producing title and other documentary evidence, utterly failed to prove his ownership over suit A schedule property.

**18.** The plaintiff further stated in the plaint that the defendants have encroached suit B schedule property and the defendants No.1 and 2 have put up water storage in suit A schedule property and the defendant No.3 has put up construction in suit B schedule property and suit B schedule property is part and parcel of suit A schedule property. As discussed above, the plaintiff has failed to prove that he is the owner in possession of suit A schedule property. Under such circumstances whether suit B schedule property is part and parcel of suit A schedule property will not arise and further stated that in his absence the defendants have encroached suit B schedule property and have put up construction and

water storage. As discussed above, the plaintiff has failed to prove his ownership over suit A schedule property. Under such circumstances, whether the defendants have encroached suit B schedule property and have put up construction cannot be considered in the absence of title of the plaintiff over the suit schedule properties. Though the plaintiff has appointed court commissioner and submitted report but initial burden is on the plaintiff to prove his ownership over suit A schedule property. The report of commissioner will not become a title document and it is only supportive material. When the plaintiff failed to prove his ownership over suit A schedule property, encroachment by the defendants will not arise and the plaintiff cannot rely upon admission by the defendant No.3 in his written statement and the burden is on the plaintiff to prove his title by producing cogent evidence. Therefore, the plaintiff has failed to prove that he is the absolute owner of suit A schedule property and further failed to prove that suit B schedule property is part and parcel of suit A schedule property and further failed to prove that the defendants have encroached suit B schedule property and the defendant No.2 has encroached suit A schedule property and has put up water storage. **Hence, Issue No.1 to 4 are answered Negatively.**

**19. Issue No.5:** In view of the above discussion, the plaintiff has failed to prove his ownership over suit A schedule property. **Hence, Issue No.5 is answered Negatively.**

**20. Issue No.6:** In view of the above answer and reasons on aforesaid issues, this Court proceeds to pass the following:

**ORDER**

The suit of the plaintiff is dismissed with costs.

Draw decree accordingly.

[Dictated to the Stenographer, transcript typed by her corrected, initialed and pronounced by me in the open Court on this the 5<sup>th</sup> day of June 2026)

**I Addl., Civil Judge and JMFC.,  
T.Narasipura.**

**ANNEXURE**

**List of witnesses examined on behalf of plaintiff:**

PW 1 : Basavarajapp

**List of documents exhibits on behalf of plaintiff:**

Ex.P 1 : Registered sale deed  
Ex.P 2 : Rough sketch  
Ex.P 3 : Legal notice  
Ex.P 4 to 6 : Postal Acknowledgments  
Ex.P 7 & 8 : Reply notices  
Ex.P 9 : Certified copy of Decree of OS.No.306/2012

**List of witnesses examined on behalf of Defendants:**

DW 1 : Puttaswamappa

**List of documents exhibited on behalf of Defendants:**

Ex.D 1 : Copy of judgment and decree of  
OS.No.306/2012  
Ex.D 2 : Legal notice  
Ex.D 3 : RPAD receipt  
Ex.D 4 : RPAD acknowledgment

**List of witnesses examined on behalf of Court Commissioner:**

CW 1 : Vijaykumar

**List of documents exhibited on behalf of Court Commissioner:**

Ex.C 1 : Report of Court Commissioner

**I Addl., Civil Judge and JMFC.,  
T.Narasipura.**

**OS.114/2013**

**(Judgment pronounced in open court vide separate order)**

**ORDER**

The suit of the plaintiff is dismissed with costs.

Draw decree accordingly

**I Addl.Civil Judge & JMFC.,  
T.Narasipura.**