



PRESENT: **Sudeen Kumar.D.J.**
B.A., LL.B.,
Sr.Civil Judge.

RA No.16/2025

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Tq and Dist: Raichur.

(By Sri. MSH., Adv)

V/s

- RESPONDENTS :**
1. Abdual Raheman S/o Shaika Madarsab,
Age:54yrs, Occ:Agriculture,
R/o. H.No.9-1, 9-2, 9-3, KEB Colony,
Yeragera-Kurnool main road, C/o
Moinuddin Hotel. Yeragera Chowk,
Yeragera, Tq and Dist: Raichur.
 2. Sajid Baba S/o Rajab Allisab,
Age:52yrs, Occ:Police,
R/o. H.No.9-1, KEB Colony,
Yeragera-Kurnool main road,
Yeragera, Tq and Dist: Raichur.
 3. K. Laxmipati S/o Ramachari,
Age:45yrs, Occ:Goldmist,
R/o. H.No.12-94, 12-95, 12-96/A, 12-97,
KEB Colony, Yeragera,
Tq and Dist: Raichur.
 4. Narasimhalu S/o Lingoji,
Age:38 yrs, Occ:Forest Department
Employee,
R/o. Opposite Vandana Bar,
Yeragera village, Tq and Dist: Raichur.

**(R-1 and 2 are ex-parte, R-3 and 4 by
Sri. VSK., Advocate)**

KARC020022122025



Decree appealed against : Judgment and decree of dismissal dated 24.04.2025 in OS.No.185/2015 for the relief of declaration and possession by Prl. Civil Judge & JMFC-II, Raichur.

Date of institution of appeal : 03-06-2025

Date of Judgment : 26-03-2026

Duration of the Appeal :

Year/s	Month/s	Day/s
00	09	23

(Sudeen Kumar.D.J)
Senior Civil Judge,
Addl.Sr.Civil Judge Court
and JMFC-I, Raichur.

:JUDGEMENT:

1. This appeal is preferred by plaintiffs in O.S.No.185/2015 on the file of learned Prl. Civil Judge & JMFC-II Court, Raichur, aggrieved by Judgment and Decree dated 24-04-2025 for the relief of declaration and possession, wherein the suit came to be dismissed with cost.



Appellants are the plaintiffs and respondents were the defendants before the Trial Court. The position of parties are referred to as in the original suit.

2. Pleadings before the Trial Court are;

Schedule of Land

Agriculture land measuring 14 guntas bearing Sy.No.116 of Yeragera Village, out of total 01 acre 20 guntas, bounded East by Land in Sy.No.115, West by Land in Sy.No.75, North by road leading to Raichur, Jambaladinni and South by land in Sy.No.____. Is referred to as suit land.

It is the ancestral property of plaintiffs, earlier it was standing in the name of mother of plaintiffs as per mutation order No.27 dated 31-03-2013, she was in possession of the same during her life time and the plaintiffs are in joint possession as the absolute owners. A road passes through suit land dividing into two portions in Raichur, Jambaladinni direction, in major portion of land is situated towards the northern side and small portion



approximately 14 guntas is situated towards the southern side of the road.

The defendants without any authority or right over suit land constructed houses, sheds and compound. The plaintiffs objected the same, but they denied the title and ownership of these plaintiffs saying that they have purchased their respective portion from the owner of land bearing Sy.No.115 in which a layout is formed which is situated towards the southern side of suit land. The plaintiffs approached the owner of the said land and requested him to verify the correct area of his land since the area acquired and constricted by defendants falls within Sy.No.116 belonging to be plaintiffs. The plaintiffs also approached the Yeragera Gram panchayath not to track constriction permission which had gone on vain.

The plaintiffs got land in Sy.No.116 of Yeragera Village served by the Taluka surveyor on 25-03-2014 and a panchanama was also drawn in the presence of panchas of on the plaintiffs. The surveyor found that the defendants encroached area of 14 guntas



in Sy.No.116 of Yeragera Village. The defendants went away at the time of panchaname after the surveyor. The surveyor fixed the boundaries of the land by putting bond stones. He constructing house, sheds and compound by the defendants fell within the area of suit land. The Gram Panchayath has granted panchayath numbers to the houses constructed by the defendants which are as under:-

1. Panchayat No.9-1, 9-2 and 9-3 to the house of defendant No.1.
2. 9-5 to house of defendant No.2.
3. 12-94, 12-95, 12-96 A and 12-97 to the house of defendant No.3.
4. 9-100/1 to the house of defendant No.4.

The area encroached by the defendants in the suit land is as under :-

- a. The defendant 1 and 2 have encroached an area of 30 X 40 each.
- b. The defendant No.3 has constructed the compound and an open are about 30 X 40.
- c. The defendant No.4 has erected a shed and the open space.



The Act of defendants is illegal. The area of construction being agricultural land it prohibits any construction in the same. Hence the defendants are to be evicted from the suit.

Defendant No.4 and 5 his written statement, dined the plaint averments expect para No.1 and contended that para No.2 to 5 of plaint are not within his knowledge and the plaintiffs shall be put to strict proof of the same, these defendants acquired title over plot No.100 measuring 50 X 40 feet bearing Panchayath No.9-100-1 formed in NA land bearing Sy.No.71 of Yeragera Village through registered sale deed in document No.6172/2007-2008 dated 17-03-2008 and the suit is barred by limitation and court fee paid in insufficient mainly.

3. Based on the pleadings the Trial Court framed the following :

:ISSUES:

1. Whether the plaintiffs prove that they are absolute owners of the suit property?
2. Whether the plaintiffs proves that, the



defendants have illegally put up construction
tin sheds in the suit property?

3. Whether the plaintiffs prove that, the
defendants have illegally encroached in the
suit property?
4. Whether the defendants proves that, the suit
is barred by law of limitation?
5. Whether the plaintiffs are entitled for the
relief as sought for?
6. What order or decree?

4. In proof of plaint averements, plaintiff No.2 was examined as
PW-1 and documents in Ex.P-1 to 6 came to be marked and
examined PW-2.

In contention defendant No.4 was examined as DW-1 and
produced documents in Ex.D-3 to 15. Ex.D-1 and 2 came to
marked in confrontation while cross examining PW-1.

5. On examination of the pleadings and evidences the Trial
Court came to the conclusion to dismiss the suit with cost.



6. Aggrieved by the Judgement and Decree the plaintiffs preferred this appeal on the following grounds extracted as it is as under ;

- 1) The impugned judgement and decree passed by the learned Pri Civil Judge Raichur is illegal and erroneous apart from being perverse as such the same is liable to be set-aside.
- 2) The learned trial Judge failed to appreciate the evidence on record properly and the trial judge concluded otherwise based on his own assumption and presumptions without application of mind.
- 3) The lower court has failed to arrive that the documents produced by the Plaintiffs.
- 4) Further, the court below has failed to appreciate all the evidence adduced by the Appellants and also failed to record the reasons and reasoning for its conclusion of the findings on Issues in the final Judgment and Decree on the basis of the law laid down as regards to the evidence.



- 5) That, the court below failed to deliver full justice to the case and the Appellants in the suit filed, and further failed to pass the Judgment and decree on the findings on Issues as per law.
- 6) That, the court below failed to look and verify the divergent claims and merits.
- 7) That, the Impugned judgment and Decree of the court below was not passed on the strong foundations of the evidences available on record.
- 8) That, the court below failed to take all the required evidences of the concerned witnesses and failed to look in to the documentary evidences available on record.
- 9) That, the court below has failed to appreciate the facts and law involved in the subject matter of the suit and the hon'ble court failed to appreciate and not followed the procedures while the document pertaining to ancient one.
- 10) That, the hon'ble court below failed to appreciate the evidence on the record, which was adduced by the both



parties to the suit, and the hon'ble court has used different yard sticks while passing an impugned order without looking in to the material and evidence.

11) That, under the facts and circumstances of the case, it is just and necessary for this hon'ble court to allow the appeal and set-aside the judgment and decree passed by the court below since the same suffers from illegality and same is untenable in the eyes of law and the hon'ble court may be further pleased to decree the suit of the appellant as prayed for.

8. Heard counsel for both sides. Perused the appeal memorandum, judgment and decree, evidences, led before the Trial Court; on the basis the following points would arise for consideration:

1. Whether the impugned judgment and decree requires the interference by this court?

2. What order or decree?

9. Findings on the points are as under:



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

Point No.2 : As per final order
for the following:

:REASONS:

10. Point No.1: The Trial Court answered Issue No.1 - Whether the plaintiffs prove that they are absolute owners of the suit property? is answered Negatively, Issue No.2 - Whether the plaintiffs proves that the defendants have illegally put up construction of tin sheds in the suit property? is answered Negatively, Issue No.3 - Whether the plaintiffs prove that the defendants have illegally encroached in the suit property? is answered Negatively, Issue No.4 - Whether the defendants proves that the suit is barred by law of limitation? is answered Affirmatively and as per the suit was barred by Article 65 of the Limitation Act 1963 the trial court concluded the suit as it is barred by law of limitation and the plaintiffs are not entitle to the relief sought for. While discussion on Issue No.1 to 3 the trial court elaborately discussed by appreciating available materials on record including the oral testimonies. But, the meticulous study of



plaint averments reveal the plaintiff averments are incomplete without the complete boundaries of suit schedule land. As towards the south the plaintiffs didn't mention any survey number as to show whose land is situated there , but, just it is mentioned as, “ South : Land Sy.No._____. Thus the boundary of suit land itself when is not clear and when the plaintiffs filed the pleadings itself and without the clear pleadings they could not establish their version is significant under the test for proof – a preponderance of probability. However it is not noticed by the trial court and no discussion on this point appears the trial court ignored the plaintiff pleadings or it didn't go through the plaintiff pleadings meticulously. It also feels that both side did not assist the trial court on the point.

As per the averment the total extension of suit land is 01 acre 28 guntas, out of which 05 guntas Pot Karab, remained is 01 acre 23 guntas, in which some land was acquired for Raichur Jambaladinni road. But it is not clear whether the extension in suit was survey number Pakka Poded or not and no KJP (ಕಮ್ಮಿ ಜಾಸ್ತಿ ಪತ್ರಿಕೆ) is produced, which is very important such as the present case. It appears that the appellants are not ensured their land with



ಹದ್ದುಬಸ್ತು ಸರ್ವೆ or ಪಕ್ಕಾ ಪೋಡ್ survey before approaching the trial court. The boundaries mentioned by the plaintiffs / appellants are incomplete as towards the southern side no survey number is mentioned. Ex.P-3 – correlate the incomplete boundary as it is also not showing the details towards the southern side. Thus, the contention of respondent / defendants holds water. The trial court emphasized the admission on this aspect along with averments there the plaintiffs / appellants did not receive the compensation for the land acquisition which explicits the truth of not knowing the correct proposition of factual factum. So that the appellants appear they are not approached the trial court with clean hands.

Significantly, as per the proposition of principle held by hon'ble Apex Court in its various resent past Verdicts; when the point of limitation is involved that should be determined first of all rather going on the other issues because if the suit actually suffers from the limitation then there is no use or result to have and in discussing the other things which shall lead to waste of time and work. However, as the issue of limitation includes the fact and law the appellants didn't make out any further facts, which said to be



proved, before this last fact finding court on the findings of the trial court, on the issue of limitation, is having significance herein. In the instant matter the observation applies aptly. The trial court had taken issue of limitation in two aspect viz., under Article 65 and 58 of the Limitation Act 1963. The suit came to be filed on 20-04-2015 for the relief of declaration of title and recovery of possession of immovable property, but as per the categorical admission by PW-1 the house formed in the year 1988-1990 those were not formed at once means that in 1988-1990 itself the plaintiffs were knowing the encroachment but still didn't take action, which is violating of Article 65 of the Limitation Act.

Description of suits	Period of Limitation	Time from which period begins to run
For the possession of immovable property or any interest therein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff

(reads as follows.)

So that, the possession became adverse in 1988-1990 itself, from which date the limitation started to run. The explanation



of the Article is not applicable in the instant case. Thus the suit actually bars under Article 65 of the Limitation Act. Here is no material or grounds made out by the appellants to show the suit is not barred under Article 65 of the Limitation Act. Hence, nothing is wrong in findings of the trial court on this point.

Further, as per the anylization by the trial court on the documents produced by the defendants with respect to the purchase of plots in 1999 and 2008 and construction of houses the plaintiff ought to have sue within 3 years from such construction as provided under Article 58 of the Limitation Act as the limitation started to begin from the date when the right to sue first accrues. Taking the year of construction of houses in to calculation the suit filed almost after lapse of 7 year, which also bars to claim the declaration at least under Article 58 of the Act. This point is also discussed by the trial court appears holds god on the point.

Thus, when the suit itself suffered from the limitation on the prayers sought for the plaintiffs / appellants, there are not entitled to the relief sought for and the conclusion arrived at by the trial



court is no way perverse, capricious or arbitrary to interfere with the findings of trial court in the impugned judgement. It is therefore the grounds made out by the appellants are rejected as not tenable. Hence the point is answered Negatively.

11. Point No.2: For the foregoing reasons on point No.1 the following order is passed:

::ORDER::

This appeal is dismissed as Original Suit in No.185/2015 is barred by limitation with cost.

Consequently the judgment and decree of trial court in the suit stand confirmed.

Send the TCR with a copy of the this judgement back.

(Dictated to the Stenographer, typed by her revised by me and after corrections pronounced in the open court on this 26th day of March – 2026)

(Sudeen Kumar.D.J)
Senior Civil Judge,
Addl.Sr.Civil Judge Court
and JMFC-I, Raichur.