



Presented on : 28-01-2025
Registered on : 28-01-2025
Decided on : 06-06-2026
Duration: 1 years, 4 months, 9 days

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC., AT
LINGASUGUR.**

Present: Smt.Undi Manjula Shivappa
B.Sc.LLM.,
Senior Civil Judge & JMFC.,

R.A.No.6/2025

Dated this the 6th day of June 2026

Appellant:

Shameembhanu W/o Late Abubekar,
Age: Major, Occ: Coolie,
R/o Maski, Tq: Maski,
Now residing at B.R., Camp, Tq: Sindhanur.
District: Raichur.

Plaintiff at trial court.
(By Sri. K.K.V., Advocate)

Versus

Respondent: Hussainsab S/o Khajapatel,
Age: 48 years, Occ: Agriculture,
and contractor, R/o Maski,
Tq: Maski, District: Raichur.

Defendant at trial court.
(By Sri. M.N., Advocate)

J U D G M E N T

This regular appeal is preferred by the appellant under Order
41 Rule 1 of C.P.C., challenging the judgment and decree passed

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in O.S.No.43/2023 dated: 13-12-2024 by the Civil Judge and JMFC., Court, Maski, Tq:Maski, District. Raichur.

2. The appellant is plaintiff and the respondent is the defendant in the trial court in the suit filed for declaration and permanent and mandatory injunction. And for the sake of brevity and convenience, the parties are hereinafter referred to by their rankings before the trial court.

3. The brief facts of the plaintiff's case is that:

That the plaintiff is the owner and possessor of house and open site bearing TPR.,No.1525 measuring East-West 30 feet and North to South 25 feet situated at Maski. The husband of plaintiff by name Abubekar was the owner and possessor of the suit property. After his death the plaintiff and her children became the owners and possessors of the same. The husband of plaintiff and the plaintiff constructed a tin shed, same was left open. Further the plaintiff was and is in possession and enjoyment of suit property since long back to till this day. The defendant trespassed into suit property and has illegally put up a small tin shed room at southern

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side of suit property about 6 to 7 years ago by taking undue advantage of weakness of plaintiff. Thereafter, plaintiff left suit property by locking house for 3 to 4 years for her livelihood and started to reside at B.R. Camp at Sindhanur Taluk. The plaintiff used to visit the suit property occasionally. Then the plaintiff came to know that defendant trespassed into suit land and demolished the suit house illegally in the last week without the consent or knowledge of the plaintiff and committed theft of valuable articles in the house of plaintiff and started illegal construction of house in entire suit property without having any right or title or interest in and over the suit property. In this regard the plaintiff has lodged private complaint against defendant. Same is pending for consideration. Inspite of requests the defendant did not vacate the suit property. The defendant is no way concerned to the suit property. The defendant without having any right, title or interest in and over the suit property has demolished the house and put up a construction.

4. Thereafter the trial court issued suit summons to defendant, the defendant appeared before the trial court, through his advocate, but not chosen to file written statement.



5. After hearing to counsel for plaintiff on perusal of materials on record, the trial court framed following;

POINTS

1. Whether plaintiff proves that, she is the owner and possessor of suit schedule property?
 2. Whether plaintiff proves that, the defendant has trespassed into suit property on southern side and has demolished suit house and illegally constructed tin shed?
 3. Whether the plaintiff is entitled for reliefs of permanent injunction and mandatory injunction as sought?
 4. What order or decree?
6. Before the trial court, plaintiff in order to prove her case she got examined as PW-1 and produced documents from Ex.P-1 to P-14. Cross-examination of Pw-1 taken as nil.
7. The trial court has given findings to the above points no.1 to 3 in the negative and finally dismissed the suit of the plaintiff.
8. Being aggrieved by the said judgment and decree, the appellant/plaintiff preferred the present appeal on the following:



G R O U N D S

The judgment and decreed passed by the trial court in favour of respondent/defendant is erroneous, illegal and unsustainable as per law and on existing facts.

2. The Respondent/Defendant appeared through counsel but no written statement has been filed. Therefore the Appellant/Plaintiff has examined herself and marked several documents Ex.P-1 to P-14 in support of her case. The contention of the Appellant/Plaintiff was proved by the Appellant/Plaintiff through oral and documentary evidence. So the reasoning given in the Judgment of the trial court in O.S.No.43/2023 is not correct as the court below has not properly considered the oral and documentary evidence produced by the Appellant/Plaintiff in the present case. The mandatory provisions of Order VIII Rule 10 of C.P.C. is not followed by the Hon'ble trial Court. Therefore on this ground alone the appeal is fit to be allowed and the Judgment passed by the trial court is liable to be set aside.

3. That, the trial court has not properly appreciated the pleadings and evidence on record placed by the Appellant and by assuming facts which are not on record and passed the judgment. Therefore findings arrived at are unsustainable and also failed to consider oral evidence & documentary evidence produced by the Appellant/Plaintiff. Hence this appeal is fit to be allowed as prayed for.

4. That, the Appellant/Plaintiff has produced the oral and documentary evidence with regard to the case of Appellant/Plaintiff, but the Respondent/Defendant has failed to file the written statement and there is no evidence

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of the Defendant in the present case. But the trial Court on the basis of presumption dismissed the suit of the Appellant Plaintiff illegally. The oral evidence coupled with the present documentary evidence will clearly establish the contention of the Appellant/Plaintiff. On this ground also the appellant prayed allow the appeal.

9. After issuance of notice to the respondent, the respondent appeared before this court but not chosen to file objections to the appeal. Thereafter the trial court records were secured. After receipt of the records, perused the written arguments filed by the counsel for the appellant and also heard argument of counsel for respondent.

10. The following points arise for my consideration:

1. Whether the judgment and decree passed by the trial court is perverse, illegal, capricious, erroneous, arbitrary, unjust and opposed to the law and interference of this appellate court is necessary ?
2. Whether the trial court has failed to appreciate the oral and documentary evidence in a proper perspective manner ?
3. What order ?

11. My answers to the above points are as under:

Point No.1 : In the negative.

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Point No.2 : In the negative.

Point No.3 : As per final order, for the following :

R E A S O N S

12. POINT No.1 and 2 :- Both these points are taken up together for common discussion to avoid repetition of facts and evidence, as they are based on same set of facts and law.

13. I have perused the trial court records. Heard the arguments of both counsels it reveals that the plaintiff has filed the suit for the relief of declaration and permanent and mandatory injunction.

Upon due service of suit summons defendants not turned up to the court hence they placed ex-parte. The burden of proof totally upon plaintiff. Hence plaintiff in order to prove his case he examined himself as pw1 he filed affidavit in lieu of chief examination where he reiterated the same averments of the plaint, ie., The husband of plaintiff by name Abubekar was the owner and possessor of the suit property. After his death the plaintiff and her children became the owners and possessors of the same. The husband of plaintiff and the plaintiff constructed a tin shed, same was left open. Further the plaintiff was and is in possession and

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enjoyment of suit property since long back to till this day. The defendant trespassed into suit property and has illegally put up a small tin shed room at southern side of suit property about 6 to 7 years ago by taking undue advantage of weakness of plaintiff. Thereafter, plaintiff left suit property by locking house for 3 to 4 years for her livelihood and started to reside at B.R. Camp at Sindhanur Taluk. The plaintiff used to visit the suit property occasionally. Then the plaintiff came to know that defendant trespassed into suit land and demolished the suit house illegally in the last week without the consent or knowledge of the plaintiff and committed theft of valuable articles in the house of plaintiff and started illegal construction of house in entire suit property without having any right or title or interest in and over the suit property.

14. In order to substantiate his oral evidence got marked 14 documents such as EX.P1 to 14. EX.P1 is the Pass book issued by the gram panchyath Maski it depicts that property bearing panchayath no.1528 that in said book the name of owner is mentioned as Abubekar S/o Khajapatel, but it is not a title deed. On the basis of pass book only ownership of the property cannot be

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declared, there must be some title deed in that respect. Mere entry in the pass book the name of any person will not confer any title over the property. EX.P2 and 3 are the compromise petitions and certified copy of plaint in OS.No.99/2014. These documents depicts the plaintiff herein has instituted suit seeking relief of partition with respect to family properties against the defendant. On careful perusal of schedule to this plait reveals those properties are not the preset suit property herein the properties in O.S.No.99/2014 AND present case on hand are totally different. Ex.P-5 to 7 are the certified copies order sheet in CC NO 86/2019, certified copy of private complaint in PC.No.5/2023, Certified copy of FIR in crime no.21/2023 these documents depicts that the plaintiff herein has lodged criminal complaint against the defendants herein Ex.P5 to Ex.P10 are the certified copies of criminal proceedings lodged by this plaintiff against defendants herein. Ex.P12 to 14 are the bills. These documents will not helpful to the plaintiff to prove her ownership over the suit property. Further the plaintiff alleged the defendant has encroached suit property on the southern side and has constructed a house but not proper documents in that respect

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produced and no documents to show how much extent the defendant encroached the property.

The appellant counsel relied upon the citation

1. ILR 2001 KAR 12 Hon'ble Supreme Court between Om Prakash Gupta Vs. Union of India and Another.
2. ILR 1999 KAR 1942 Mahanteswamigalu Guru Vs. Chairman Grama Panchayat of Managoli.
3. ILR 1999 KAR 1945 between M.S. Zahed Vs. K. Raghavan.

15. I have gone through the above citations the facts and circumstance in the citations and present case on hand are totally different. In those cases there are sufficient evidence to decree the suit but herein case on hand no title deeds in favour of plaintiff hence only on the basis of weakness of defendant suit cannot be decreed. Hence there is no warrant to interfere in the judgment and decree passed by the trial court. Hence I answer point no.1 and 2 in the Negative.

16. POINT No.3: In view of the reasons and findings on the Points No.1 and 2, I proceed to pass the following :



O R D E R

The regular appeal filed by appellant is hereby rejected with cost.

Consequently the impugned judgment and decree passed on 13-12-2024 in O.S.No.43/2023 by the Civil Judge and JMFC., Maski is hereby confirmed.

Office to draw decree accordingly.

Transmit the trial court records along with the copy of this judgment and decree to the trial court, forthwith.

(Dictated to Stenographer Grade-III directly typed on computer and print out taken by him, corrected, signed and then pronounced by me in the open court on this the **6th day of June 2026**)

(UNDI MANJULA SHIVAPPA)
Senior Civil Judge and JMFC.,
Lingasugur.