



**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
MANVI**

Present :

Sri.SHIVARAJ V SIDDESHWAR,

Bsc., B.Ed., LL.B.,

Senior Civil Judge & JMFC, Manvi

Dated this the 26th Day of March 2026

R.A.85/2023

Appellant :

Smt. Earamma W/o
Late Yankappa,
Age: 70 years, Occ: Agriculture
R/o Rajaladinni village, Tq: Manvi,
Dist: Raichur. Now residing at
Metal Nagar Kuntoli, Amarnath
Post, Thane District, Maharashtra.
Through GPA Holder

Mallikarjuna Kore S/o Laxmana
Ranganath Kore,
Age: 63 years, Occ: Retired Syndicate
Bank Employee,
R/o Ambarnath Chal Kuntoli Near
Prakash Tailor Metal Nagar Ambarnath
West, Dist: Thane, Mumbai,
Maharashtra.

(By Sri. Gumma Basawaraj, Advocate)

V/s

- Respondents :**
1. Smt Channamma W/o
Late Dodda Bhimappa,
Age: 55 years, Occ: Agriculture,
 2. Shivanna S/o
Late Dodda Bhimappa,
Age: 40 years, Occ: Agriculture
 3. Channabasava S/o
Late Dodda Bhimappa,



Age: 35 years, Occ: Agriculture,
R/o Ward No.13 Ambedkar Nagar,
Manvi, Tq: Manvi, Dist: Raichur.

4. Shivayya S/o Ayyappa Vandagal,
Age: 51 years, Occ: Agriculture,
R/o Rajaladinni, Tq: Manvi,
5. Hanumantha S/o Earanna Barker,
Age: 35 years, Occ: Agriculture,
R/o Rajaladinni, Tq: Manvi,
6. Nagappa S/o Bheemayya Alkod,
Age: 61 years, Occ: Agriculture,
R/o Rajaladinni, Tq: Manvi,
7. Durugamma W/o Sugappa,
Age: 60 years, Occ: Agriculture,
R/o Jai Bheem Nagar Manvi,
Tq: Manvi,

(R1 to 3 Siddalingappa, Advocate)
(R4 to 7 exparte)

Date of institution of Appeal	02.09.2023
Nature of Judgment or order appealed against	Judgment and Decree passed in O.S. No.214/2014 dated: 19.06.2023 suit for the relief of declaration and injunction by the learned Civil Judge and JMFC., Manvi.
Date on which the Judgment in the present Appeal is pronounced	26.03.2026
Total Duration	Year/s Month/s Day/s 02 06 24

Senior Civil Judge & JMFC,
Manvi.



JUDGMENT

This appeal is filed by the appellants against the Judgment and decree dated: 19.06.2023 passed by the learned Civil Judge, Manvi in O.S.No.214/2014, in which the Trial Court dismissed the suit for the relief of declaration and injunction.

2. The present appellant is plaintiff in original suit before the trial court. The present respondents are defendants in the original suit before the Trial Court. For the convenient sake, the parties are referred to, as they are referred to in the original suit before the Trial Court.

3. Brief facts of the plaint are as follows:

The husband of plaintiff, namely Yankappa S/o Timmayya was the owner of the suit land bearing Sy No.43/3 measuring 13 acres 3 guntas situated at Rajaldinni village of Manvi Tq. The husband of defendant No.1 and 2 had filed application on 02.12.2008 before the Revenue officials to mutate the suit property in his name and on the strength of application the suit property is mutated in the name of husband of defendant No.1 and 2. The plaintiff further submit that after death of husband of defendant No.1 and 2, the defendant No.3 had filed application before the revenue officials to mutate the suit property in their name and they have got mutated the suit property in their name. The plaintiff further submit that after knowing the fact of application filed by the defendant No.3, the plaintiff



had filed application before the Assistant Commissioner, Raichur to effect mutation infavour of plaintiff. The plaintiff further submit that her husband Yankappa died in the year 1982. The plaintiff requested the defendants on 20.10.2014 for rectification of RTC but defendants refused to do so. Hence, plaintiff filed this suit.

4. The Trial Court's records show that, in response to the suit summons the defendants appeared through their counsel and defendants No.1 to 3 filed their written statement.

5. Brief facts of written statement of defendants No.1 to 3 are as fallows;

In the written statement the defendant No.1 to 3 denied the plaint averments and further contended that one Timmayya resident of Rajaldinni village, Tq., Manvi had 5 sons namely 1) Sabjappa 2) Yanakappa 3) Yallappa 4) Shivarayappa and 5) Hanumayya. The husband of defendant No.1 and 2 namely Dodda Bheemappa is son of Sabjappa. The plaintiff is wife of Yankappa son of Timmayya. The defendants No.1 to 3 further contended that the brothers of Yankappa put their efforts to purchase the suit property and they have invested money to purchase the suit property in the name of Yankappa. The defendant No.1 to 3 further contended that Yankappa was not the absolute owner of suit property and it was purchased during the jointness of the family. The defendants No.1 to 3 further



contended that the husband of defendant No.1 and 2, namely Dodda Bheemappa being the karta of joint family has got mutated the suit property in his name. The defendant No.1 to 3 further contended that plaintiff is not in possession of suit property as on the date of suit. It is also contended that plaintiff is not owner of suit property as on the date of suit. On these grounds defendants No.1 to 3 prayed to dismiss the suit.

6. Trial Court has framed the following issues.

ISSUES

1. Whether the plaintiff proves that she is the absolute owner of the suit property as on the date of suit?
2. Whether the defendants prove that the suit property is the joint family property of the defendant No.1 to 3?
3. Whether the suit is bad for non joinder of the necessary properties?
4. Whether the plaintiff is entitled the relief sought in the plaint?
5. What order or decree?

7. The Trial Court's record show that the plaintiff examined 5 witnesses as PW1 to 5 and relied upon 10 documents. On the other hand the defendant No.1 examined herself as DW1 and also examined one witness as



DW2 and relied upon 23 documents which are marked as Ex.D1 to 23.

8. After, appreciating the oral and documentary evidence on record, the trial Court came to the conclusion that, the plaintiff has no title and possession over the suit property as on the date of suit and also answered issue No.1 to 4 in the Negative and has dismissed the suit with costs.

9. It is that the Judgment which is impugned by the appellant/ plaintiff on the following grounds:

The trial Court failed to appreciate the evidence produced by the plaintiff and has erroneously dismissed the suit.

On this ground and along with other formal grounds the plaintiff has prayed to set aside the Judgment passed by the trial Court and to decree the suit.

10. Heard arguments from both side. Perused the records.

11. Based on the said contentions taken up by the plaintiff/appellant and defendant No. 1 to 3, following points arose for my consideration.

1. Whether the plaintiff has proved her title over the suit property as on the date of suit?
2. Whether the plaintiff has proved her possession over the suit property as on the date of suit?



3. Whether the plaintiff is entitled to the relief sought for?
4. Whether the interference is called for in the Judgment and decree of the trial Court.
5. What order or direction?

12. My answers to the above points are as under;

Point No.1	:	In the Negative
Point No.2	:	In the Negative
Point No.3	:	In the Negative
Point No.4	:	In the Negative
Point No.5	:	As per final Order, for the following :

REASONS

13. Point No.1 and 2: These points are interlinked with each other, in order to avoid the repetition of facts they are taken together for common discussion.

Burden is on the plaintiff to prove that she has title to the suit property as on the date of suit and she is in possession of suit property as on the date of suit. A perusal of records of the trial Court it suggest that on 20.09.2021 learned counsel for the plaintiff had filed application to discard the examination in chief of PW1 and the trial Court has discarded the examination in chief of PW1.

14. Ex.P1 is RTC for the year 1968-69 and it suggest that suit property is appearing in the name of Yankappa S/o Timmayya. Ex.P2 is RTC for the year 2007-2008 it is also



appearing in the name of the Yankappa. Ex.P3 is mutation extract dated 02.12.2008 and it suggest that suit property is mutated in the name of Dodda Bheemappa the husband of defendant No.1 and 2. Ex.P4 is mutation extract dated 27.07.2013 and it suggest that suit property is mutated in the name of defendant No.1 to 3. Ex.P5 is mutation extract dated 13.10.2011 and it suggest that suit property is appearing in the name of Dodda Bheemappa the husband of defendant No.1 and 2. Ex.P6 is RTC but it is not related to the suit property. Ex.P7 is application dated 26.06.2014 filed by the present plaintiff before the Assistant Commissioner, Raichur. Wherein it is stated that the defendants are in cultivation of the suit property. Ex.P8 is pedigree issued by the Village Accountant Manvi and it suggest that it finds no mention of outward number of the office of Village Accountant, Manvi. Ex.P9 is sale deed dated 18.06.1971 and it suggest that suit property is purchased the name of Yankappa S/o Timmayya. Ex.P10 is GPA executed by plaintiff in favour of her son-in-law.

15. Ex.D1 and 2 are RTC for the year 1964 to 1969 and they suggest that earlier the suit property was standing in the name of one Veerayya S/o Pampayya. Ex.D3 is certified copy of RTC and it suggest that suit property is appearing in the name of Yankappa S/o Timmayya. Ex.D4 to 8 are RTC for the year 1978 to 2000 and they suggest that suit property is appearing in the name of the Yankappa. Ex.D9



to 13 are RTC for the year 2000 to 2008 and they suggest that suit property is appearing in the name of Yankappa. Ex.D14 to 16 are RTC for the year 2008 to 2011. Ex.D17 is RTC for the year 2012-13 and they suggest that suit property is appearing in the name of Dodda Bheemappa the husband of defendant No.1 and 2. Ex.D18 is RTC but it is not related to the suit property. Ex.D19 is certified copy of sale deed. Contents of Ex.D19 and Ex.P9 are one and the same. Ex.D20 is mutation extract dated 20.06.1972 and it suggest that suit property is mutated in the name of the Yankappa. Ex.D21 to 23 mutation extracts and they have also been produced by the plaintiff and they have already been discussed.

16. PW2 Narasimhalu is son-in-law of plaintiff. During the course of cross-examination of PW2 he admitted that Yankappa had 4 brothers. PW2 also admitted that since 15 years ago Yankappa started to reside at Mumbai. Further, PW2 also admitted that defendants are in possession of suit property. Further, PW2 also deposed that he himself, plaintiff and PW5 have given information to file suit against the defendants.

17. Further, PW3 Manjunath during the course of his cross-examination deposed that husband of plaintiff namely Yankappa and his brothers have earned the money and they have jointly purchased the suit property in the name of



husband of plaintiff. Relevant, portion of cross-examination of PW3 is as under;

“ವಾದಿಯ ಗಂಡ ಯಂಕಪ್ಪ ಹಾಗೂ ಅವರ
ಸಹೋದರರು ದುಡಿದು ದಾವೆ ಆಸ್ತಿಯನ್ನು ವಾದಿಯ ಗಂಡನ
ಹೆಸರಿನಲ್ಲಿ ಖರೀದಿಸಿರುತ್ತಾರೆ ಅಂದರೆ ಸರಿ.”

18. PW4 Sabjamma is daughter of plaintiff. During the course of cross-examination of PW4 she stated that suit property was purchased 50 years ago and at the time of purchase of suit property her father and brothers of her father were joint. PW4 also admitted that Dodda Bheemappa and defendant No.1 to 3 are in possession of suit property. PW4 also admitted that defendants No.1 to 3 are paying revenue tax of suit property and for their legal necessity they have sold the suit property infavour of defendants No.4 to 7. PW4 also admitted that purchasers defendants No.4 to 7 are in possession of suit property. Relevant, portion of cross-examination of PW4 is as under;

“ಪ್ರತಿವಾದಿ 1 ರಿಂದ 3 ದಾವಾ ಆಸ್ತಿಯ ಕರವನ್ನು ತುಂಬುತ್ತ
ಬಂದಿದ್ದಾರೆ ಅಂದರೆ ಸರಿ. ಪ್ರತಿವಾದಿ 1 ರಿಂದ 3 ತಮ್ಮ
ಕುಟುಂಬದ ಅಡಚಣೆ ಸಲುವಾಗಿ ದಾವಾ ಆಸ್ತಿಯನ್ನು ಪ್ರತಿವಾದಿ 4
ರಿಂದ 7 ರವರಿಗೆ ಮಾರಾಟ ಮಾಡಿರುತ್ತಾರೆ ಅಂದರೆ ಸರಿ.
ಪ್ರತಿವಾದಿ 4 ರಿಂದ 7 ದಾವಾ ಆಸ್ತಿಯಲ್ಲಿ ಸಾಗುವಳಿ
ಮಾಡುತ್ತಿದ್ದಾರೆ ಅಂದರೆ ಸರಿ.”

19. PW5 Mallikarjuna Kore is son-in-law of plaintiff. PW5 during the course of his cross-examination he also admitted that as per Ex.P7 the plaintiff had filed application before



the Assistant Commissioner, Raichur stating that defendants are in cultivation of suit property.

20. In the affidavit filed in lieu of examination in chief DW1 and 2 have reiterated the contents of the written statement. During the course of cross-examination of DW1 learned counsel for the plaintiff posed many suggestions to elicit from the mouth of PW1 that the plaintiff is owner and in possession of suit property but DW1 denied the said suggestions.

21. Above said admission of PW2 to 5 clearly suggest that the suit property was in possession of husband of defendant No.1 and 2 and now the suit property is in possession of defendants No.4 to 7. At this stage it is appropriate to refer a decision reported in 2006 S.C.C. Online KAR 501 between Aralappa V/s Jagannath & others. In this decision the Hon'ble High Court of Karnataka held as under:

“The plaintiff has to prove his title to the property and also his possession over the property as on the date of the suit. Further held, when the plaintiff is not in possession of the property on the date of suit, appropriate relief consequential to declaration of ownership would be recovery of possession of the property – when the plaintiff is out of possession of the property and does not seek relief for



possession, a mere suit for declaration is not maintainable”.

22. Principles laid down in the above referred decision of our Hon’ble High Court aptly applicable to the facts of the present suit and appeal. The plaintiff has filed this suit for declaration without seeking relief of recovery of suit property from the defendants, as such, suit is not maintainable. Hence, **above point No.1 and 2 are answered in the Negative.**

23. Point No.3: In a suit for declaration and injunction plaintiff must prove his /her title and possession over the suit property and alleged interference by the defendants. While answering Point No.1 and 2, I have already concluded that the plaintiff has not been able to prove her title and possession over the suit property as on the date of suit. Hence, **Point No.3 is answered in the Negative.**

24. Point No.4: I have carefully perused the judgment passed by the trial Court and I am of the opinion that the trial Court has correctly appreciated the evidence on record and has given correct findings to the issues framed in the suit and rightly dismissed the suit. Hence, I am of the opinion that the judgment passed by the Trial Court does not required any interference by this court. Hence, **Point No.4 is answered in the Negative.**

25. Point No.5: In view of my findings to above points, I pass the following:



ORDER

The appeal filed by the appellant is dismissed with costs.

The judgment passed by the learned Civil Judge, Manvi dated 19.06.2023 passed in OS. No. 214/2014 is hereby confirmed.

Send back the trial Court's record along with a copy of this judgment forthwith.

(Dictated to the stenographer transcribed, typed by her and then corrected, signed and then pronounced by me in the open court on this the 26th day of March 2026)

(Shivaraj V Siddeshwar)
Senior Civil Judge & JMFC,
Manvi.