



**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC.,
AT SINDHANUR**

Present :- SRI. LAKSHMIKANTH JANAKIRAM MISKIN, M.A., LL.M
Senior Civil Judge & J.M.F.C.
SINDHANUR.

: REGULAR APPEAL No : 31/2025

DATED: 01st day of July 2026

APPELLANT :- Nagaraja S/o Late Sinddanagouda Kadabur
Age 43 year Occ. Agri,
R/o Near Nada Kacheri Badarali village
Tq. Sindhanur, Dist. Raichur.

(By Sri. KAG, Advocate)

-V/s-

RESPONDENTS :-1. Vishwanatha Bar S/o Govinda Bar
Age 69 year Occ. Agri,
R/o Near Sports grounds,
RH Colony No.5 (Bangali camp), Tq, Sindhanur
Dist. Raichur.

(By Sri. VAP, Advocate)

Date of Institution of Appeal : 25.06.2025
Nature of Appeal : Appeal against the
Judgment and
decree dated 04.09.2024
in O.S.No.597/2023
passed by the I Addl. Civil
Judge, Sindhanur

Date on which the Judgment
was pronounced

: 01-07-2026

Total duration

: year/ s month/s Day/s
01 00 06



: J U D G M E N T :

This appeal filed by the appellant/defendant being aggrieved by the Judgment and decree dated 04.09.2024 in O.S.No.597/2023 passed by the I Addl. Civil Judge, Sindhanur in decreeing suit filed for declaration and possession.

2. For the sake of convenience, the parties are referred in this Judgment as per their ranks before this court.

3. **The case of the plaintiffs, as set out in the plaint, is as below:-**

It is the case of the plaintiff that, he is the owner and possessor of suit property. That he has purchased the same from its previous owner under registered sale deed bearing document No.3151/83-84, that since from the date of purchase, plaintiff is in actual possession and enjoyment over the suit property. Such being the case, on 08.06.2023 he moved an application before the Survey Authorities for conducting of survey of suit property. That, on conducting



the survey he came to know that, the defendant herein had encroached 1 acre in suit property. That he encroached to an extent of 1 acre towards eastern side in North-South direction, the defendant is not ready to vacate the encroached portion. It is submitted that, plaintiff has perfected his title over suit property by way of purchase. The defendant is no way concerned to the plaintiff and to the suit property. In spite of it, he has encroached the land to an extent of 1 acre in suit property. The plaintiff requested the defendant to vacate and deliver the possession of suit property but defendant flatly refused for the same. That several panchayaths were held. In spite of it, defendant not heeded to the requests made by plaintiff. Hence, having left with no alternatives the plaintiff is constrained to institute the present suit and has prayed decree the same.

4. Upon service of summons, defendant did not appeared before the court, hence, he is placed ex parte.



Accordingly, case of plaintiff remained unchallenged and uncontested.

5. The plaintiff in order to prove his case, plaintiff lead in his evidence, he got examined as PW.1 and produced the documents from Ex.P.1 to 5.

6. The points that arise for court consideration are as under:

POINTS

- 1.** Whether, plaintiff proves that, he is the absolute owner of suit property?
 - 2.** Whether, plaintiff proves that, defendant have encroached the 1 acre in the suit property on eastern side in North-South direction?
 - 3.** Whether, plaintiff is entitled for reliefs sought for?
 - 4.** What order?
7. After hearing the arguments and considering the oral and documentary evidence let in before it, the learned



trial Judge has decreed the suit of the plaintiff by giving following findings on the above points:

- | | | |
|------------|---|--|
| Point No.1 | : | In the Affirmative |
| Point No.2 | : | In the Affirmative |
| Point No.3 | : | In the Affirmative |
| Point No.4 | : | As per final order for the
following: |

8. Being aggrieved by decree of the suit the appellant/defendant has come with regular appeal by setting the following grounds in the appeal.

GROUND FOR APPEAL

- 1) That the judgment and decree passed by the lower Hon'ble 1st additional Civil Judge Court at Sindhanur dated 3-9-2024 in OS No 597/2023 against the defendant is totally erroneous, vexatious and contrary to the settled principles of law and facts and without application of mind giving finding on the basis the defendants not contest the suit and decreed the suit of plaintiff hence the same is deserves to be set aside and the suit of the plaintiff is liable dismissed for want of proper pleading and proof.
- 2) That the plaintiff not pleaded and proved about the act of defendant for encroachment of alleged suit properties. That the plaintiff claiming the suit property on the basis of survey report. That the plaintiff or his vendors were in possession of alleged suit properties. That the suit properties are



in lawful possession and enjoyment of defendant and his two brothers and acquired the same as joint family coparceners. That the defendant joint family developed the suit properties long back for growing irrigated crops in the suit properties but the plaintiffs not raised any objection at the time of levelling the suit property. Hence the lower court judgment and decree is liable to dismissed.

- 3) That the plaintiff claiming the suit property on the basis of Haddu Basthi survey report. That it seems the alleged Haddubasthi report prepared on the basis of office records. That the alleged Hissa Phodi record is totally false one as the Hissa No 45/1/1 to 3 not prepared according to enjoyment of the land owners. That the alleged Hissa Phodi records prepared by the survey record was totally illegal as the plaintiff was and is not in possession of 1 acre land and it will be referred to ADLR for conducting enquiry and decide the Ons matter by giving an opportunity to land possessor. Hence very approval of Hissa Phodi sketch and Form No 10 record approved by the ADLR is totally illegal and against the provisions of law and also on facts.
- 4) That the Khasara Pahani records were not prepared on the basis of survey and settlement records hence the entry of extents shown in the revenue records having no value in the eye of law. That the Khasara Pahani are relevent only to existence of patties in Sy No's. That the extent shown in the Revenue records are not supported with any survey settlement records. Hence the entry in the ROR record will not create the title of of ROR holder. That the lower court on the basis of Haddubasthi record and sale deeds and defendant not appeared and contest the suit on these grounds the court has come to conclusion plaintiff being the owner of



encroached area and granted decree as prayed in the plaint. That the plaintiff not pleaded and proved before the court at the time of purchase the property through registered sale deed. That the plaintiff not examined surveyor before the court to prove the survey records and it is mandatory to examine the Surveyor as per sec 83 of Indian evidence Act. Hence the plaintiff not proved the encroachment of plaintiff's suit property. Hence the lower court Judgment and decree is liable to set aside.

- 5) That the lower Hon'ble trial court raised 4 points for disposal of the suit and answered point no 1 to 3 in the affirmative and allowed the suit of the plaintiff by taking in to consideration of registered sale deeds marked as EX-P 1 and 2. That the mere production of sale deeds and marking the documents cannot be based about the ownership without supporting the pleading of plaintiff taken the possession of suit properties by taking measurement of land at the time of purchase either from Govt surveyor or by Private survey about the confirmation exact area of purchased the land and in this aspect there is no pleading and proof. Hence on the basis of Registered sale deed it cannot be declared as the plaintiff was and is the owner and possessor of suit properties. Hence the lower Hon'ble has come to wrong conclusion the vendors of the plaintiff delivered suit encroachment property without supporting any pleading and proof and on the basis of defendant not appeared and contest the suit by filing the written statement. That it is settled principles of law that the plaintiff shall prove his own case but cannot be take the shelter of the weakness of the defendant. That the plaintiff failed to prove his suit claim by pleading and proof of encroached suit properties ownership



and the entitlement for recovery of possession. Hence the lower court finding on Point No 1 is totally erroneous and against the settled position of law there fore the same is liable to set aside.

- 6) That the Hon'ble lower court answer the point no 2 in the affirmative is totally illegal and against the provisions of law. That the plaintiff out to prove the survey records by examining surveyor who was conducted survey and author of survey reports must be examined but the plaintiff not examined surveyor the Haddubasthi records not duly proved by the plaintiff hence the lower court finding on point No 2 is erroneous. Hence the finding on point no 2 is liable to set aside.
- 7) That the lower Hon'ble has come to conclusion on Point No 3 as the plaintiff proved his case with cogent oral and documentary evidence and the plaintiff is entitled for reliefs sought in the plaint. That in fact the plaintiff not pleaded and proved about the encroach made by the defendant and not examined the Surveyor to prove the survey report hence in the absence of not leading cogent evidence hence the finding on point no 3 is fit to be set aside.
- 8) That the finding on point No 4 is liable to set aside and the suit of plaintiff is fit to be to dismissed.
- 9) That the defendant not served the suit summons personally and the plaintiff came to know about the passing of judgment and decree only on receipt of EP notice. That the defendant and his two brothers separated in the year 2018 and suit summons not served to defendant but it seems to received by the defendant brother but the said brother not informed to the defendant. That if the



defendant personally served the suit summons the suit will be contested and protected the disputed property by contesting the plaintiff's suit. Hence it is necessary to set aside Ex-Party Judgment and decree and the matter may be remanded to lower court to provide an opportunity to the defendant to contest the suit by filing the WS and decide the case on merits as per law.

9. I have heard the arguments addressed by the learned counsels appearing for the both the parties on main appeal.

10. From the grounds made out in the appeal, materials placed before this court and the arguments addressed by both sides the following points would arise for my consideration.

1. Whether the appellant/defendant proves that the impugned judgment and decree dated, 04.09.2024 passed in O.S. No.597/2023 by the trial court in decree the suit, is contrary to law, facts, evidence and probabilities of the case and as such, it is liable to be interfered with?

2. What order?

11. My findings to the above points are as follows, as per the reasons discussed below: -

POINT NO.1 :- Affirmative

POINT NO.2 :- As per final the final order



:: REASONS ::

12. **POINT No.1 :-** During the course of argument learned counsel for the appellant submitted that the plaintiff has filed suit for the trial court for declaration and possession. Learned trial judge decreed the suit of the plaintiff on the ground that the defendants not appeared through his counsel and in spite of service of summons. Therefore, he prayed for remanding the case before the trial court, giving opportunity to the defendant for filling written statement and contesting the case.

13. As per the records after service of suit summons the defendant has not appeared before the trial court. Process report dated 21.10.2023 make it clear that process served on the brother of the defendant. Process is not served personally upon the defendant. Thereafter the plaintiff led evidence. On the basis of oral and documentary evidence placed by the plaintiff the trial court passed judgment in favour of the plaintiff on 04.09.2024. Considering the same, I am of the opinion that the defendant has



not contested the case before the trial court by way of filing written statement and adduced oral evidence. I have perused the above said contention of the defendant/appellant. I am of the opinion that from looking into the fact and circumstance of the case, taking into consideration of the fact that process not served upon defendant personally, in the interest of justice and equity the matter remanded to the trial court and give an opportunity to the defendant to file written statement. This court opined that the matter shall be decided on merits after giving opportunity to both parties. I am of the opinion that if said order is passed remanding the case some inconvenience may be caused to the plaintiff. Said inconvenience to be compensated by way of imposing cost on the defendant. From the above discussion I come to the conclusion that on this aspect the judgment and decree of the trial court is to be interfere and it is liable to be set-side. Hence, answer the point No.1 in affirmative.

14. **POINT NO.2:-** In view of my findings on the above points, the appeal filed by the appellant/defendant is liable to be allowed. Accordingly, I proceed to pass the following order.



:: O R D E R ::

The appeal filed by the appellant/defendant is allowed in the following terms.

The Judgment and decree dated 04.09.2024, passed by the I Addl. Civil Judge and JMFC, Sindhanur in O.S. No.597/2023 is set aside.

Consequently, the suit is remanded back to the trial court with a direction to give an opportunity to the defendant to file written statement, lead evidence. The matter shall be disposed of in accordance with law.

It is directed the both parties shall appear before the trial court on 09.08.2026 without expecting any notice from the said court.

It is directed to the defendant that she shall file written statement within 15 days from the date of appearance before the trial court.

Sent back the entire file to the trial court along with copy of this Judgment, forthwith.

(Dictated to the stenographer directly on laptop, typed by him, revised by me and after corrections pronounced in the open court on this the 01st day of July 2026)

(Lakshmikanth J. Miskin)
Senior Civil Judge & JMFC.
SINDHANUR