

KARN320007682019



Presented on : 23-04-2019
Registered on : 23-04-2019
Decided on : 08-06-2026
Duration : 7 years, 1 months, 15 days

**IN THE COURT OF THE I ADDL., CIVIL JUDGE AND
J.M.F.C., AT KANAKAPURA**

Dated: This the 08th day of June 2026

PRESENT

Smt. LATHASHREE B.V., B.A., LL.B.,
I Addl., Civil Judge & JMFC,
Kanakapura.

O.S No.153/2019

Plaintiff:

Sri. Devaraju Naik
S/o late. Bheema Naik,
Aged about 51 years,
R/at Loka Naikana Tandya
Village, Thattegere Dakhle,
Hamlet of Maralavadi Hobli,
Kanakapura Taluk.

(By Sri. A.R.K., Adv.)

-Vs-

Defendant:

Sri. Naga Naik
S/o late. Bheema Naik,
R/at Loka Naikana Tandya
Village, Thattegere Dakhle,

Hamlet of Maralavadi Hobli,
Kanakapura Taluk.

(By Sri. C.M.J., Advocate)

Date of Institution of the Suit	:	23.04.2019		
Nature of Suit	:	Permanent Injunction		
Date of the commencement of recording of evidence	:	11.12.2023		
Date of which the Judgment was pronounced	:	08.06.2026		
Total	:	Year/s	Month/s	Day/s
		07	01	15

Sd/-

(Lathashree B.V.)

I Addl., Civil Judge & JMFC,
Kanakapura.

J U D G M E N T

The plaintiff has filed the present suit against the defendant seeking for the relief of permanent injunction to restrain the defendant from interfering with the peaceful possession and enjoyment of the suit schedule property and to grant an such other reliefs.

2. The description of the suit schedule property is as under:

Land bearing Sy. No.242, (Old No.14), measuring 1.35 acres, situated at Thattekere village, Maralavadi Hobli, Kanakapura Taluk which is bounded on :-

East by: Government land;

West by: Land of Naga Naik (Defendant);

North by: Land of Khandi Naik;

South by : Government Land.

3. The brief facts of the plaintiffs' case are as under:

It is the case of the plaintiff that he is the absolute owner in possession and enjoyment of the land bearing Sy. No.242 (Old No.14) measuring 1 acre 35 guntas situated at Thattekere village, Maralavadi Hobli, Kanakapura Taluk which is nothing but the suit schedule property and he acquired the same by virtue of grant certificate issued by the concerned Tahasildar,

Kanakapura taluk vide No. LNDSR(3)(MA) dated 14/98-99 and the suit schedule property is a portion of government land bearing Sy. No.14 of Thattekere village and he has been cultivating the suit schedule property unauthorizedly. However, on his application to the revenue department and by considering his physical possession and records was pleased to grant the suit schedule property in his favour as narrated above and after the said grant of the land, the same was re-surveyed by survey department by fixing the boundary and katha was changed into the name of plaintiff vide M.R No.78/2008-09 and RTC extract also stand in his name. Accordingly, he has been paying taxes to the government regularly and after grant of the land, the re-survey of the land was conducted and new number was assigned as Sy. No.242 and he has become the absolute owner in possession and enjoyment of the suit property.

It is further submitted that, the defendant has no manner of any right, title or interest whatsoever with respect to the suit schedule property and is trying to interfere with the peaceful possession and enjoyment of the same in one or the other way. It is also submitted that, the defendant is none other than the brother of the plaintiff who has also got the land on the western side of the suit schedule property but he is trying to encroach upon the portion of the suit schedule property towards towards the western side. It is further contended that, on 10.04.2019 the defendant had came near the suit schedule property and tried to obstruct the plaintiff in doing agricultural operations and with great difficulty, the plaintiff was able to resist the illegal interference of the defendant with the help of the neighbors but the defendant threatened the plaintiff with dire consequences and that the defendant is strong person whom the plaintiff cannot resist and as high handedness activities.

Hence, the present suit is filed and that the cause of action for the suit arose on 10.04.2019 when the defendant tried to interfere with the peaceful possession of the plaintiff with respect to the suit schedule property.

4. On due service of summons, the defendant has appeared through his counsel and filed written statement and on perusal of the same, it is submitted that, the suit of the plaintiff is false, frivolous, vexatious, highly speculative and misconceived and as such the plaintiff is guilty of misrepresentation of the facts. Hence, the suit is not maintainable either in law or on facts and liable to be dismissed.

5. He further denies rest of the contentions averred in the plaint pleadings as false and goes to submit that, the cause of action is created and has raised specific defence that, the defendant is the own brother of plaintiff and the suit schedule property

originally belonged to government bearing its original Sy. No.14/1A totally measuring 21 acres 0.09 guntas and the defendant has been in lawful with physical and peaceful possession and enjoyment of the suit property since from 20 years without interference of anybody and he obtained the same by giving an application for grant of the said suit land measuring 1.35 acres into his name and as per the application and request the concerned authorities inspected the spot and drew mahazar and issued the grant certificate to the defendant with respect to the suit schedule property. Accordingly, he is in physical possession and enjoyment of the same.

6. It is also contended that, the original Sy. No.14 was granted among 17 members. However, there is no sketch and pahani to the said survey number and as per the grant certificate, village map is a blue print. Hence, there is no way to prepare sketch and there is no proper possession shown and the boundaries are

not identified with respect to the possession over the said Sy. No.14. It is further submitted that, the plaintiff is not in possession and enjoyment of the suit schedule property and he has shown false boundaries for the purpose of filing the suit which is different from the grant certificate issued for him. It is also contended that, the government has granted land to the plaintiff in the year 2004 but katha was not made out in his name till 2009 as because the measurement was not correct. However, the plaintiff colluding with revenue officials created false documents and obtained katha without knowledge and consent of the defendants. But according to the grant certificate, the land is not fit for agricultural purpose and it is his contention that, he was granted 1 acre 35 guntas and has been cultivating cereal crops and also grown coconut trees and also dig the borewell for the purpose of development of the said land and as the land granted for plaintiff was not good, he has tried to

encroach the 20 guntas of land which belongs to the said defendant but he did not give an opportunity for the same. Hence, he has deliberately filed false suit by concocting some documents against the true and real owner of the suit schedule property.

7. It is also contended that, as per the grant certificate the defendant has mutated the revenue documents in his name and has been in peaceful possession and enjoyment of respective share without anybody's interference. But having no valid right, title or interest, the plaintiff has falsely and wrongly claimed his right over the same. Hence, viewed from any angle, the suit of the plaintiff is not maintainable and does not deserves to be allowed and prays to dismiss the suit with exemplary costs.

8. Based on pleadings of both the parties, the learned predecessor-in-office framed the following :-

ISSUES

1. Whether the plaintiff proves that he has been in peaceful possession and enjoyment of schedule property as on date of filing the suit?
2. Whether the plaintiff further proves the alleged interference caused by the defendant?
3. Whether the plaintiff is entitled to relief claimed?
4. What Order or Decree?

9. In order to substantiate his case on hand, the plaintiff has chosen to step in to the witness box on oath as PW.1 and lead his chief-examination in lieu of affidavit by reiterating the averments of plaint and has got marked Ex.p.1 to Ex.p.4 and has been fully cross-examined by the learned counsel for the defendant. The plaintiff has also got adduced a witness on his behalf on oath as PW.2 who has led his chief-examination in lieu of affidavit and has been fully cross examined by the defendant. On the other hand, the defendant has chosen to step in to the witness box

on oath as DW.1 and lead his chief-examination in lieu of affidavit by reiterating the averments of written statement and has got marked Ex.D.1 to Ex.D.13 and has been fully cross-examined by the learned counsel for the plaintiff.

10. Heard both the sides and perused the materials available on record.

11. The findings to the above issues are as under:

Issue No.1 to 3 : In the Affirmative;

Issue No.4 : As per final order

for the following:

REASONS

12. **Issue No.1 and 2:-** Both issues are interlinked with each other, they are taken up together for commons discussion to avoid repetition of facts and circumstances of the case.

13. Before dwelling into the factual matrix of the case, it is just and necessary to have a conceptual view over the subject matter in issue. Now, it is a suit for

permanent injunction. So while considering or adjudicating a matter with respect to the relief sought for permanent injunction, the Court would ascertain basically with two criteria, one with respect to the lawful possession and enjoyment of the suit schedule property by the plaintiff and the second one is alleged interference by the defendants over the same. However, the initial burden is upon the plaintiff, who is the dominus-litus, to discharge the burden vested upon him or her and show that she is in the said possession of the suit schedule property as described therein and only then the aspect of alleged interference comes into picture for discussion. Now, with respect to the facts and circumstances of the matter, it is already narrated above in detail. Hence only crucial points are taken up for discussion in order to avoid a repetition of the same.

14. Now, it is the case of the plaintiff that, the said plaintiff and defendants are own brothers and

they were cultivating the land unauthorizedly and later made an application to the concerned authorities, wherein, the said plaintiff was granted the suit schedule property. Likewise, even the defendant was also granted with a land in Sy. No.14 which is a government land and after resurvey it bears Sy. No.242. Now according to him, he is the absolute owner in possession and enjoyment of the suit schedule property and has obtained katha and RTC into his name and has been paying taxes regularly and the said defendant obtained the land towards western side of the plaintiff's land and is trying to encroach upon the portion of the plaintiff's suit schedule property towards western side and such interference is shown to be made on 10.04.2019. Hence, with no other alternative, he has filed the suit.

15. In contra, it is the case of the defendants that, though he admits the relationship between

himself and plaintiff. But, he denies the contention of the plaintiff is the absolute owner in possession of the suit schedule property. According to him, the suit schedule property originally belong to government bearing Sy. No.14/1A and later, as he was in possession and enjoyment of the suit property since from 20 years and as he had given an application for grant of the suit property into his name, the concerned officers after spot verification have allotted the said land by issuing a grant certificate and accordingly he is in possession of the same. It is his contention that, the said land in Sy. No.14 was allotted to 17 members but there was no sketch or phodi in the said survey number. Hence, the grantees are not identified in the possession of the said Sy. No.14. It is also his contention that, there is variations with respect to boundaries in grant certificate as well as suit schedule property description mentioned by plaintiff. However, he has got all revenue documents in his name and he

has been growing cereal crops, coconut trees and has dug borewell in his property but the land granted for plaintiff is not fit for agricultural purpose. Hence, he has tried to encroach 0.20 guntas of land belonging to defendant and when the same was resisted, he has filed the false suit.

16. Now, as it is a suit for bare injunction, the initial burden is always upon the plaintiff to prove that, he is in lawful possession and only when the possession is established, the aspect of interference can be looked upon. At this juncture, in order to prove and substantiate his case, the plaintiff has himself stepped into the witness box on oath as PW1 and led his chief-examination in lieu of affidavit and has got marked Ex.p.1 to Ex.p.4.

17. Wherein, Ex.p.1 is the grant certificate and on perusal of the same, it reflects the name of plaintiff and it is shown that, he has been granted with the

land measuring 1 acre 35 guntas in Sy. No.14 block No.2A. Now, on perusal of the same as in pursuance to the suit schedule property description it could be ascertained that, though old survey number is 14 but the block number is not mentioned and that apart in the boundaries at Ex.p.1 towards east it is Sy. No.14, towards west block No.1A, towards north block No.3A and towards south it is Sy. No.14. Whereas, in the suit schedule description it is shown to be east by government land, west by land of defendant, north by land of Khandi Naik and south by government road and it is also shown to be the land bearing Sy. No. 242 and according to plaintiff, it is a re-survey number to the said land. Ex.p.2 is the phodi sketch extract dated 21.11.2007 which reflects the name of plaintiff for a measurement of 1 acre 35 guntas which is shown to be phoded as 240 as per the narration in the plaint pleadings and the same is annexed with the sketch.

18. Further, Ex.p.3 is the RTC extract of Sy. No.242 pertaining to the year 2023-24 showing the name of plaintiff to an extent of 1.35 guntas and Ex.p.4 is the tax paid receipt dated 15.12.2017 with respect to the Sy. No.242. Now these are the documents furnished by the plaintiff in order to substantiate his pleadings. Moving further, a witness is also examined on his behalf on oath as PW.2 by name Shiva Naik S/o Kandi Naik who goes to depose in his chief-examination in lieu of affidavit that, he knows the plaintiff and defendant and that the suit schedule property belongs to the plaintiff and was obtained by him through grant certificate issued by revenue authority and he is in possession of the entire extent by cultivating the same by growing crops. The PW.1 and 2 were fully cross-examined by the learned counsel for defendant.

19. On the other hand, the defendant has also chosen to substantiate his defence by stepping into the

witness box on oath as DW.1 and reiterated the averments of written statement and got marked the documents at Ex.D.1 to 13. Wherein, Ex.D.1 is the grant certificate dated 31.10.2003 in the name of defendant, wherein, it shows that, he has been granted with 1 acre 35 guntas in Sy. No.14 at block No.1A with boundaries on east by block No.2A, west by Sy. No.14, north by block No.3A and South by Sy. No.14. Ex.D.2 is the phodi sketch extract in the name of defendant dated 31.10.2003, wherein, it reflects the name of the defendant to an extent of 1 acre 35 guntas bearing re-Sy. No.241 and the same is annexed with the sketch. Ex.D.3 is the aakarbandh extract of the resurvey No.241, Ex.D.4 is the RTC extract of Sy. No.241 pertaining to the year 2011-12 till 2025-26 in the name of defendant to an extent of 1 acre 35 guntas.

20. Further, Ex.D.5 is the E-copy of encumbrance certificate to establish the fact that, the defendant has been granted with land in the said

survey number. Ex.D.6 is the RTC extract of Sy. No.14 pertaining to the year 2006-07 which reflects the name of both plaintiff as well as the defendant to an extent of 1 acre 35 guntas. Likewise, Ex.D.7 is the RTC extract of Sy. No.14 pertaining to the year 2007-08 and the same is followed in Ex.D.8 for the year 2008-09. Further, Ex.D.9 is the M.R extract of Sy. No.14 shows it to be a gomala land granted in favour of defendant to an extent of 3.5 guntas. Ex.D.10 is the tax paid receipt dated 01.08.2025 with respect to property No.241 in the name of defendant. Moving further, Ex.D.11 to 13 are the certified copies of order sheet, plaint, copy of I.A No.1 in O.S No.600/2021 on the file of Hon'ble Senior Civil Judge and JMFC, Kanakapura which on perusal reflects that, both plaintiffs and the defendants are both placed as defendants in the said matter by one Nagarajnaik and others.

21. Now, on perusal of the materials placed by both the ends, the documents from the end of plaintiff as well as defendant clearly reflects the aspect that, the said plaintiff and defendant both were granted with 1 acre 35 guntas each in Sy. No.14 by the concerned authority of the government. The plaintiff was granted with his land at Sy. No.14 in block No.2A and defendant was granted with his land in Sy. No.14 at block No.1A and coming to the aspect of boundaries it could be clearly ascertained that, the document at Ex.p.1 and Ex.D.1 substantiate that the boundary towards east of the plaintiff land shares the boundary towards west by the defendants land. That apart, Ex.p.2 and Ex.D.2 clearly reflects that, resurvey number was given to the said Sy. No.14 for both plaintiff and defendant as bearing No.241 and 242. Admittedly, the plaintiff has not given the recent RTC extracts i.e., to say as on the date of filing of the suit but the defendant himself has furnished these RTC

extracts at Ex.D.6 to Ex.D.8, wherein, it could be culled out that, name of plaintiff as well as defendant are reflecting in Sy. No.14 which is later given as resurvey number as 241 and 242.

22. Wherein, as per Ex.p.2 resurveyed No.242 is shown in the name of plaintiff and resurvey No.241 is shown in the name of defendant. Now the question of properties in their particular name is not as much as in dispute. However, the very contention of the plaintiff is that, towards wester side the defendant is trying to encroach the property of the plaintiff but the defendant has completely denied the said contention by stating that, he is the actual owner of the suit schedule property and the plaintiff who also as the land therein is trying to encroach 20 feet of the defendants suit schedule property.

23. Now, when the cross-examination of PW.1 is perused, it could be ascertained that, there is no

dispute regarding the relationship between the parties and there is also dispute that initially the suit property belong to Sy. No.14 which is a government gomala land. It could be also ascertained that, the defendant by placing the suggestion has admitted the contention of the plaint pleadings with respect to the grant certificate obtained by them based upon their unauthorized cultivation in the said lands. Hence, there is no dispute regarding the grant certificate also.

24. Now, the defendant has also suggested regarding the boundaries but to the said extent this court has already discussed above. Wherein, initially the land was granted in Sy. No.14 for plaintiff as well as the defendant but there is variations in the block numbers as per Ex.p.1 and Ex.D.1. Further, when these boundaries are perused and in pursuance of the pleadings by both the ends it could be ascertained that, there is no much discrepancy regarding the

boundary as because Ex.p.2 and Ex.D.2 clearly reflect the said aspect. Now, though there is a contention of defendant that, the plaintiff is trying to encroach upon the property of defendant nowhere in suggestion placed by the defendant towards PW.1 in the cross-examination it could be culled out that, he places himself as absolute owner in possession of the suit schedule property as narrated in the written statement.

25. However, it is to be noted that, in the written statement, there is clear defence by the defendant that, he is the absolute owner in possession of the suit property and that apart there is no phodi work done in Sy. No.14 where as in the cross-examination of PW.1 it could be ascertained that, the defendant himself has posed the suggestion that, the land was granted as per Ex.p.1 with the said boundaries, during which there was no phodi work which is admitted by the PW.1

rather a contention is placed by the said PW.1 that, survey has been taken place subsequently as per Ex.p.2 and Ex.D.3. For which, Ex.p.2 and Ex.D.2 itself suffices the said aspect.

26. Further, even in the cross-examination of PW.2, it could be ascertained that, the said PW.2 is also neighbors to the said suit schedule property as well as to the property of the defendant. He also admits that, the suit property bears original Sy. No.14 which was the government land and later the plaintiff and defendant were granted with the said property. It could be further ascertained that, the said witnesses also deposes that, there was no phodi or durasth work done at the time of granting the land. But, it has been clearly suggested by the defendant himself that, there was a dispute regarding the encroachment aspect between plaintiff and defendant. That apart, nothing much comes for ascertain from the PW.2 which would rather help the contention of defendant No.2.

27. Now, coming to the cross-examination of DW.1, it could be ascertained that, the said defendant has flipped his entire defence or his contention of written statement as well as chief-examination. As because, in the cross-examination, he clearly admits that, plaintiff was allotted with 1 acre 35 guntas in Sy. No.14 which came to be resurveyed after phodi work and numbers has given as Sy. No.242 and after phodi work the government themselves have issued sketch regarding the same. Interestingly, DW.1 also admits the boundaries suggested by the plaintiff as narrated in the suit schedule property description of the plaint and it is also admitted that, the plaintiff has obtained RTC and has been paying taxes to the government and also cultivating ragi and other cereal crops in the suit property.

28. Further, when there was a suggestion from the end of plaintiff that, the said defendant tried to encroach the property of plaintiff towards side, during

the cultivation of plaintiff in his property, the said DW.1 states that, he has been cultivating in 2 acres of the said land and according to him he has been granted with 2 acres of land, though he has himself produced Ex.D.1 which is also followed by RTC extract as well as his own pleadings to the said effect that, he was granted with 1 acre 35 guntas, he tilts his defence by stating that, he was granted with 2 acres and denies his own sketch at Ex.D.2, wherein, it could be inferred that, he has tried to encroach the land of plaintiff. That apart, he himself clearly admits that, he has no right or possession over the suit schedule property and admits himself that he is the adjacent owner of the property which becomes sufficient to state that the plaintiff has successfully elicited the factors in support of his case. Hence, on over all ascertainment of the said oral and documentary evidence and clear admissions given by DW.1, it could be stated that, the plaintiff has proved his physical,

lawful possession and enjoyment of the suit schedule property and regarding the interference aspect the very own admission of DW.1 stating that, he owns 2 acres which is contradictory to his own document reflects the aspect of alleged interference also.

29. Moving further, when the documents and materials has furnished by the plaintiff on record is taken for ascertainment, it is to be noted that, even mere mental apprehension of interference in itself suffices once possession is shown by the plaintiff with respect to suit property and in this regard, *this court relies upon the decision reported in **1991(1) K.L.J. 536 between Laxman V/s. M.P. Krishnappa**, wherein it is specifically stated as hereunder:*

“SRA 1963- S.36 Injunctory decree-Basis for grant of –Threatened invasion of it can be basis no need for binding whether threat is real or not-where party seeking preventive relief of injunction on the basis of possession has established fact of his possession, he is entitled to relief” and it is further held in Para 3 of the aforesaid decision is that “An aggrieved person comes to the court complaining of interference of the defendant may be at a particular point of

time the has not caused interference, but once the fear stores heavily in the mind of the aggrieved person there shall be no difficulties for court to grant injunction especially when it is found that particular person is in possession.”

1998(5) Kar.L.J. 168 (Romeo M.F.

Aquinas and Others V/s. Florina Mothias and

Another) wherein it is held as under:

“The right is not disputed by both the parties. Now the plaintiffs’ allegation was that there was an interference or at least apprehended that there is likelihood of interference. For a man to live in peace he resorts to Court and seeks an order of injunction. When the defendant admits the claim of the plaintiffs, nobody will be prejudiced by granting the decree for injunction. Once the matter has been seized by the Court it is for the court to grant the relief, the parties desire to get and when the relief is available on the basis of the averments made in the plaint and grantable on the basis of the written statement there can be no impediment for granting such a relief at all. A man may not know the mind of another. When the fear is in the minds of plaintiffs the Courts must dispel the fear and when admissions are made they should be made matured into a decree. The mere fact that there is a defence raised by the defendants that he has no intention of obstruction does not dispel the threat of interference that has been caused in the mind of the plaintiff”.

30. Hence, based upon the detailed discussion made above and by relying upon the decision supra, it could be said that the plaintiff has successfully proved

that he is in possession of the suit schedule property and there was alleged interference by the said defendant over the same. Hence this Court answers the **Issue No. 1 and 2 in affirmative.**

31. **Issue No.3:** In pursuance to the detailed discussion made in Issue No.1 and 2, it goes to suffice that, the plaintiff has substantially proved his case that he is in possession of the suit schedule property and his peaceful possession was disturbed and interfered by the defendant on record. Hence he is definitely entitled for the relief as claimed therein. Hence, this court answered the **Issue No.3 in the “Affirmative”.**

32. **Issue No.4:** In view of above findings on Issues No.1 to 3, this court proceeds to pass the following:

ORDER

The suit of the plaintiff is hereby decreed with costs.

The defendant is permanently restrained from interfering with the peaceful possession and enjoyment of the suit schedule property.

Draw decree accordingly.

(Dictated to the Stenographer directly on computer, corrected, signed and then pronounced by me in the Open Court on 08th day of June 2026)

Sd/-

I Addl., Civil Judge & JMFC,
Kanakapura.

ANNEXURE

List of witnesses examined on behalf of plaintiff:

PW.1 : Sri. Devaraju Naik;
PW.2 : Sri. Shiva Naik;

List of documents exhibited on behalf of plaintiff:

Ex.p.1 : Grant certificate;
Ex.p.2 : Certified copy of Phodi Sketch;
Ex.p.3 : RTC extract;
Ex.p.4 : Tax paid receipt.

List of witnesses examined on behalf of defendants:

DW.1 : Sri. Naganaiik.

List of documents exhibited on behalf of defendants:

Ex.D.1 : Grant certificate;
Ex.D.2 : Attested copy of the sketch;
Ex.D.3 : Attested copy of the Aakarbandh
extract;
Ex.D.4 : RTC extract of Sy. No.241;

Ex.D.5 : E-copy of encumbrance certificate;
Ex.D.6 to 8: RTC extracts of Sy. No.14;
Ex.D.9 : M.R extract;
Ex.D.10 : Tax paid receipt dated 01.08.2025;
Ex.D.11 to 13: Certified copies of order sheet, plaint,
copy of I.A No.1 in O.S No.600/2021;

Sd/-

I Addl., Civil Judge & JMFC,
Kanakapura.