

KASM300000862025



**IN THE COURT OF PRL. SENIOR CIVIL JUDGE & JMFC.,
BHADRAVATHI**

Dated this the 1st day of September, 2026

Present: **Sri. Raghavendra.D., B.Com., LL.B.,**
Prl. Senior Civil Judge & JMFC,
Bhadravathi.

R.A.No.9/2025

Appellants: 1) Smt.Beebe Jan,
W/o Late Sri.Meeran Sab,
Aged about 73 years,

2) Sri.Aslam Sab,
S/o Late Sri.Meeran Sab,
Aged about 50 years,

Both are residents of
Dhonabaghatta village,
Kasaba Hobli,
Bhadravathi Taluk,
Shivamogga District – 577229.

(By Adv., Sri.A.G.M.)

V/s

Respondents: 1) Sri.Mehaboob Sab,
Dead by his LR's.,

1(a) Smt.Rabiya bi,
W/o Late Sri.Mehaboob Sab,
Aged about 64 years,

1(b) Sri.Shabber,
S/o Late Sri.Mehaboob Sab,
Aged about 46 years,

1(c) Sri.Sadath,
S/o Late Sri.Mehaboob Sab,
Aged about 43 years,

1(d) Sri.Kizer Ali,
S/o Late Sri.Mehaboob Sab,
Aged about 38 years,

1(e) Smt.Umme Salma,
D/o Late Sri.Mehaboob Sab,
Aged about 41 years,

2) Sri.Akber Sab,
S/o Late Sri.Kasim Sab,
Aged about 61 years,

All are residents of
Dhonabaghatta village,
Kasaba Hobli,
Bhadravathi Taluk,
Shivamogga District – 577229.

(R.1(a to e), R.2: By Adv., Sri.H.B.Siddesh)

Date of Institution of the appeal : 20.01.2025

Nature of appeal : Appeal against the Judgment
passed by learned IV Addl.Civil
Judge & JMFC, at Bhadravathi
dtd: 09.01.2025 in O.S.440/2018

Date on which Judgment was
Pronounced : 01.09.2026

Years Months Days
Total duration : -01- -07- -11-

Prl. Senior Civil Judge & JMFC,
Bhadravathi.

J U D G M E N T

This is an Appeal preferred against the Judgment and Decree dated: 09.01.2025 passed in O.S.No.440/2018 by the learned IV Addl. Civil Judge & JMFC, Bhadravathi.

2. The rank of the parties shall be referred to their ranks before trial Court.

3. The plaintiffs/respondents have filed the suit in O.S.No.440/2018 for permanent injunction.

4. The case of the plaintiffs/respondents before trial Court that respondents/plaintiffs are joint owners and they are in joint possession and enjoyment of suit property measuring 3 acre 16½ guntas of of land in Sy.No.68/3 situated at Tadasa village, Bhadravathi Taluk. Their father by name Sri.Khasim Sab owned and possessed total extent of 7 acres 05 guntas of land in Sy.No.68 of Tadasa village. He was personally cultivating the land and he had grown mango and coconut trees in the said property. Khatha of the said property stood in the name of Sri.Khasim Sab. The appellants/defendants filed a suit in O.S.No.67/1994 against Sri.Khasim Sab for the relief of partition and separate possession of

their share in the properties alleging that it belongs to Sri.Buden Sab the original owner and father of Sri.Khasim Sab and Sri.Meran Sab. Said suit was decreed granting half share in the suit property. Against Judgment and decree passed in O.S.No.67/1994 they preferred appeal before Hon'ble District Court, Shivamogga. Hon'ble Appellate Court allowed appeal and modified the Judgment and decree passed in O.S.No.67/1994 held that the appellants have no right to claim any share in Sy.No.68 of Tadasa village. After death of Sri.Khasim Sab, they being the sons of Sri.Khasim Sab, they succeeded all the properties left behind him. They acquired the title and ownership and continued the cultivation of suit schedule property and growing crops and harvesting regularly.

4(a). Further, it is pleaded that the defendants/appellants got exparte decree in O.S.No.67/1994, against exparte decree, they preferred Mis.Petition No.76/1996 which was also dismissed. Subsequently, challenged the order passed by the Court in a Mis.Petition No.76/1996 before Hon'ble High Court of Karnataka in M.F.A.No.888/1998-99, it was allowed and Judgment and decree passed in O.S.No.67/1994 dated: 17.08.1996 was set aside and permission was granted to Sri.Khasim Sab to file written statement

and contest the said suit. All the interim orders and further proceedings in F.D.P.No.23/1996 ceased to be effective. The appellants though aware of the above said facts, they have intentionally and wrongfully to mislead the revenue authorities have secured and created documents to their own convenience and claiming that they have taken possession of suit schedule land in FDP proceedings. Sri.Khasim Sab during his life time and even after his death they are in continuous possession and enjoyment of suit property along with other properties. The appellants have no manner of right, title or interest over the suit property, but they trying to interfere into their peaceful possession and enjoyment of their suit property.

5. On service of summons, appellants/defendants appeared before Court and filed written statement. In their written statement they admitted that appellants have filed a suit in O.S.No.67/1994 for partition and separate possession by alleging that the property belongs to Sri.Buden Sab who had sons by name Sri.Khasim Sab and Meeran Sab. After contest suit was decreed, they have took possession in FDP through Court. Later on, father of respondents filed Mis.Petition No.76/1996 to set aside the decree and same was

dismissed and again challenged the same before Hon'ble High Court of Karnataka in M.F.A.No.888/1999. During pendency of MFA, they have filed FDP and in FDP, Tahsildar was appointed as Court Commissioner to effect division. As per terms of decree they were put in possession on 7.2.2001 by making necessary entry in mutation and RTC. There is a specific direction in M.F.A.No.888/1999 that decree holder possession should not be disturbed. Suit was decreed and same was challenged before Hon'ble Fast Track Court, Bhadravathi in R.A.No.267/2010 and allowed the said appeal in part. Then they preferred Regular Second Appeal before Hon'ble High Court of Karnataka in R.S.A.No.63/012 and 319/2012 by Sri.Khasim Sab and Smt.Bibi Jan, same was pending. During pendency of appeal, respondents got changed khatha and pahani as per M.R.No.H-14/2011-12 dated 29.05.2012 and tried to disturb their possession. The Tahsildar has no right to effect mutation entry in the name of respondents when RSA is pending before Hon'ble High Court of Karnataka. The respondents suppressing the true facts filed present suit for injunction. Hence, prays to dismiss the suit.

6. Upon considering the rival contentions raised by the parties, the trial Court has framed the following:

ISSUES

- 1) Whether the plaintiffs prove that, they are in peaceful possession and enjoyment of the plaint schedule property?
- 2) Whether the plaintiffs prove the illegal interference of the defendants?
- 3) Whether the plaintiffs are entitled for the reliefs as sought for?
- 4) To what order or decree?

7. Before trial court, in order to prove his case, the plaintiff No.2 himself examined as PW-1 and he got produced and marked 10 documents as per Ex.P.1 to Ex.P.10. On the other hand, the defendant No.2 himself examined as DW-1 and got produced and marked 7 documents as per Ex.D.1 to Ex.D.7.

8. After perusal of materials available on record, and after hearing the arguments advanced by the learned advocates for the parties, the learned Trial judge has passed the Judgment dated: 09.01.2025 where under and whereby the suit of the plaintiffs was

decreed. It is that Judgment and decree that are impugned in this appeal by defendants/appellants on the following:

GROUND

- (a) The impugned Judgment and decree of the trial Court is opposed to law, facts and all probabilities of the case.
- (b) The impugned Judgment and decree of the trial Court is highly capricious, perverse, illegal, bad in law.
- (c) The impugned Judgment and decree of the trial Court is very much arbitrary in nature and suffer for want of proper and convincing reasons and reasons which one assigned are arbitrary in nature and unsustainable in law.
- (d) The impugned Judgment and decree of trial Court is suffer for want of proper appreciation of evidence on record. The trial Court erred by discarding the substantial and cogent evidence placed on record by the appellant and thereby committed miscarriage of justice by passing impugned Judgment and decree and also not appreciated M.F.A.No.888/1999.
- (e) The trial Court has blindly accepted the uncorroborated oral testimony of PW-1.

- (f) The trial Court has erred in discarding the evidence of DW-1, though said evidence is substantially corroborated with Ex.D.1 to D.7 and thereby committed miscarriage of justice in passing impugned Judgment and decree.
- (g) The trial Court has failed to apprise the pleadings and evidence on record.
- (h) The trial Court has not justified in decreeing the suit.
- (i) The trial Court has committed error in discarding the oral and documentary evidence adduced by the defendants.
- (j) The trial Court has failed to frame proper and correct issues.

Among other formal grounds, the appellant has prayed for setting aside the judgment passed by the trial Court and to allow the appeal.

9. Heard arguments on both sides. Learned counsel for appellant filed written arguments. I have carefully perused written arguments of appellant. Perused the materials available on record.

10. Learned counsel for appellants relied upon the following Judgments: -

- i) **2023 (5) ILRA 1221** in between **Sri.Phool Kumar Vs. Sri.Shyam Singh & Others.**
- ii) **(2008) 4 SCC 791** in between **Smt.Tanusree Basu & Others Vs. Sri.Ishani Prasad Basu & Others.**
- iii) **W.P.No.103828/2021** in between **Sri.Muttappa & Others Vs. Sri.Bheemappa.**
- iv) **AIR 2000 P & H 377 (DB)** in between **Sri.Bachan Singh Vs. Sri.Swaran Singh.**
- v) **AIR 2005 SC 242** in between **National Institute of Mental Health & Neuro Sciences (NIMHANS) Vs. Sri.C.Parameshwara.**
- vi) **R.S.A.No.1678/1984 (O & M)**, decided on 17.09.2007 in between **Sri.Kishan Singh Vs. Sri.Sucha Singh.**
- vii) **AIR 2008 SC 2033** in between **Sri.Anathula Sudhakar Vs. Sri.P.Buchi Reddy (Dead) by LRs & Others.**

11. Learned counsel for respondents relied upon the following

Judgments: -

- i) **AIR SC 5522** in between **Sri.P.Anjanappa (D) By LRs Vs. Sri.A.P.Nanjundappa and others.**
- ii) **2026 SAR (Civil) 369** in between **Sri.Gobind Singh and Others Vs. Union of India and Others.**
- iii) **2024 (5) KCCR 979** in between **Sri.Umesha @ Umamaheshwara through LRs Vs. Smt.Susheelamma and others.**

With due respect to the Hon'ble Apex Court, High Court of Karnataka and Hon'ble High Court of Punjab & Hariyana, I have carefully perused the above reported Judgments. The ratio and dictum laid down in the above Judgments taken in to consideratin to decide the above case.

12. In view of materials available on record, the points that would arise for my consideration are as follows:

- (1) Whether learned trial Judge justified in holding that respondents are in possession and enjoyment of suit property?***
- (2) Whether learned trial Judge justified in granting permanent injunction in favour of respondents?***
- (3) Whether interference of this Court is required in the Judgment and decree passed by the learned trial Judge?***
- (4) What order or decree?***

13. Now, my answers to above points are as under:

Point No.1: In the affirmative,

Point No.2: In the affirmative,

Point No.3: In the negative,

Point No.4: As per final order

for the following:

REASONS

14. **Point No.1 & 2:** - Both these points are taken up together for discussion as they are interlinked each other in order to avoid repetition of facts and evidence.

It is the case of respondents before trial that their father Sri.Khasim Sab was owner in possession and enjoyment of total extent of 7 acres 05 guntas of land in Sy.No.68 of Tadasa village and he was personally cultivating land by growing mango and coconut. Said land was also standing in the name of Sri.Khasim Sab and they are joint owners in joint possession and enjoyment of 3 acres 16½ guntas of land in Sy.No.68/3. The appellants by filing suit in O.S.No.67/1994 for partition and separate possession, they are trying to interfere into their peaceful possession and enjoyment of suit property. Per contra, the appellants before trial Court contended that they have filed suit for partition and separate possession of their half share in Sy.No.53/3 and 68/2 and house property of Tadasa village in O.S.No.67/94. Said suit was decreed in the year 2010. The father of respondents challenged the decree passed in O.S.No.67/94 before Hon'ble High Court of Karnataka in M.F.A.No.888/1999. During pendency of said Miscellaneous

Appeal as per preliminary decree passed by the trial Court delivered possession and entered their names in the revenue documents. Hon'ble High Court of Karnataka allowed M.F.A.No.888/1999 and thereafter suit was decreed against Judgment passed by this Court. The respondents preferred an appeal in R.A.No.267/2010, said appeal was allowed in part. They have preferred R.S.A. before Hon'ble High Court of Karnataka and same is pending for consideration and they are in possession and enjoyment of suit property.

15. The respondents before trial Court to prove that they are in possession and enjoyment of suit property they have produced Ex.P.1 – RTC of Sy.No.68/3 of the year 2020-21. As per said document RTC standing in the name of respondent. In addition to production of revenue documents, 2nd plaintiff – Sri.Akbar Sab examined as PW-1. In his chief-examination he has deposed that they are in possession and enjoyment of suit property. In his cross-examination he has deposed that one Sri.Khasim Sab and Sri.Meeran Sab are brothers. The defendants/appellants are children of Sri.Meeran Sab. Further he has admitted that suit has been filed against his father in O.S.No.67/1994 for partition and

separate possession. He has also admitted decreeing of said suit and filing of F.D.P.No.23/1996. Further he has admitted that they have preferred M.F.A. before High Court of Karnataka in M.F.A.No.888/1999.

16. DW-1 in his chief-examination he has deposed that they have filed suit for partition and separate possession in O.S.No.67/1994 and also he has deposed proceedings before trial Court and Hon'ble High Court of Karnataka and also he has deposed that he has received possession as per orders of this Court. DW-1 in his cross-examination he has deposed that he has admitted plaintiff filed suit to an extent of 3 acres 16½ guntas in Sy.No.68/3. Said survey number consisting total extent measuring 7 acres 05 guntas. Further, he has admitted that one Sri.Meeran Sab was brother of Sri.Khasim Sab. DW-1 denied the execution of relinquishment deed by Sri.Meeran Sab on 3.11.1976.

17. The learned counsel for respondent vehemently argued that father of appellant by name Sri.Meeran Sab executed relinquishment deed in favour of Sri.Khasim Sab by relinquishing his right over the suit property, as such appellants have no right over suit property. The respondent before trial Court in order to

prove execution of relinquishment deed by the father of respondent, they have produced Ex.P.8 – certified copy of relinquishment deed and also produced Ex.P.9 – Judgment and Decree passed by the Hon'ble IV Addl. District & Sessions Judge, (Fast Track Court) Bhadravathi. On perusal of Ex.P.8 – relinquishment deed, one Sri.Meeran Sab executed relinquishment deed in favour of Sri.Khasim Sab on 3.11.1976 by receiving ₹.1000/-, Ex.P.8 – relinquishment deed executed in the year 1976, present appellants filed suit for partition in the year 1994 seeking half portion in the suit property. The appellants have not stated anything about execution of Ex.P.8 – relinquishment deed in O.S.No.67/1994.

18. As per evidence placed by both parties, there is no materials on record to show that appellants have questioned Ex.P.8 – relinquishment deed and also father of appellants has not filed any suit for partition or challenging Ex.P.8 – document. But the appellants have filed suit for partition by including property mentioned in Ex.P.8 – relinquishment deed. Respondents before trial Court produced Ex.P.6 – RTC of the year 1974-75 to 1978-79. As per said documents, it was standing in the name of Sri.Bacche Sab @ Khasim Sab s/o Sri.Buden Sab. Even on perusal of Ex.P.6

– RTC standing in the name of Sri.Khasim Sab. As per Ex.P.8 – document, father of respondents acquired right and possession over suit property. Revenue documents produced by the respondents also standing in the name of respondents. All these documents produced by the respondents before Court shows that suit property is standing in their names. The appellants before trial Court did not produce any document to show that suit property was in joint possession of appellants and respondents. There is no evidence before Court to show that suit properties are in joint possession of both parties.

19. The learned counsel for appellants vehemently argued that based on orders passed in F.D.P.No.23/1996 they took possession of suit property. Further, learned counsel for appellants vehemently argued that they preferred R.S.A. against Judgment and Decree passed by the Hon'ble Fast Track Court in R.A.No.267/2010 before Hon'ble High Court of Karnataka. The R.S.A.No.63/2012 is still pending, as they being tenants in common, injunction cannot be granted in favour of respondents.

20. It is an admitted fact that respondents filed suit in O.S.No.67/1994, that suit was decreed ex-parte. The respondent

filed Mis.Petition No.76/1996 to set aside decree in O.S.No.67/1994, but said Mis.petition was dismissed. By aggrieving the orders they have preferred an appeal in M.F.A.No.888/1999 before Hon'ble High Court of Karnataka. Hon'ble High Court of Karnataka set aside the Judgment and decree passed by this Court in O.S.No.67/1994. There is no dispute regarding proceedings before trial Court and Hon'ble Appellate Court and Hon'ble High Court of Karnataka. As per Ex.D.6, R.S.A.No.63/2012 and 319/2012 pending before the Hon'ble High Court of Karnataka, the FDP closed in view of orders passed by the Hon'ble High Court of Karnataka in M.F.A.No.888/1999. After remanding case, again the Judgment and decree passed in O.S.No.67/1994 and appeal was also preferred, said appeal was partly allowed. It is also admitted fact that R.S.A.No.63/2012 is pending before Hon'ble High Court of Karnataka, but no stay. When Hoin'ble High Court of Karnataka set aside the Judgment and decree passed in O.S.No.67/1994, the arguments canvassed by the learned counsel for appellants that they took possession through Tahsildar as per FDP proceedings is not tenable. According to appellants the Tahsildar put them in

possession on 7.2.2001 as per orders passed by the Court on 29.5.2001 by making necessary entries in mutation and RTC. The contention raised by the appellants in the written statement itself clearly shows prior to 7.2.2001 they are not in possession. If really they are in joint possession and enjoyment of the suit property the question of putting them in possession of suit property by the Tahsildar as stated by them does not arise. More over, the appellants have not produced any document to show that the Tahsildar put them in possession of suit property. Mere entering the appellants name in revenue records itself is not sufficient to establish their possession in the suit property.

21. As per Ex.P.8 – relinquishment deed, Sri.Meeran Sab relinquished his right during his lifetime and handed over the possession to Late Sri.Khasim Sab. Ex.P.8 is registered relinquishment deed of the year 1976 and it is having its own presumptive value and so far the said document was not yet cancelled.

22. The learned counsel for the respondents relied upon the Judgment reported in **AIR 2025 SC 5522** in between

Sri.P.Anjanappa (D) By LRs Vs. Sri.A.P.Nanjundappa and

others. Wherein, Hon'ble Apex Court at para 7.3 held as follows: -

“The statutory presumption that attaches to a registered instrument operates, and, in the case of Ex.D.15 which was more than thirty years old when tendered, the presumption under Section 90 of the Indian Evidence Actg, 1872/Section 89 of the Bharatiya Sakshya Adhiniyam, 2023 is also attracted. This principle has been reiterated by this Court in Sri.Prem Singh Vs. Sri.Birbal in the following terms:

There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption.”

23. Case on hand, respondent before trial Court produced Ex.P.8 – certified copy of registered relinquishment deed executed by Sri.Meeran Sab s/o Sri.Buden Sab in the year 1976 and Ex.P.8 is registered document and also it is 30 years old document.

24. Further, Hon'ble Apex Court at para 7.4 held as follows: -

“A release by a coparcener for consideration operates immediately to divest his subsisting coparcenary interest; it does not depend for its efficacy on any further act of implementation.”

25. Case on hand also Sri.Meeran Sab executed registered relinquishment deed in favour of his brother relinquishing his right over suit property and khathas were also mutated on the basis of release deed in favour of Sri.Khasim Sab. In view of ratio laid down by the Hon'ble Apex Court release deed operates immediately on its execution. The ratio laid down by the Hon'ble Apex Court is aptly applicable to the case on hand.

26. The appellants before this Court produced documents along with I.A. under Order LXI Rule 27 of CPC. After hearing the arguments on merits, the said I.A. was allowed on 4.7.2026. The appellants have marked Ex.D.8 through DW-1 to show that the name of the Smt.Bibi Jan shown at the southern side. As per Ex.D.8 the respondents sold 0-08¼ guntas in Sy.No.68/2. Respondents claiming their right in Sy.No.68/3. The appellants did not place any materials before Court to show that the said extent of 0-08¼ guntas in Sy.No.68/2 is adjacent to the plaint schedule property. Sy.No.68/2 & 68/3 earlier it belongs to their family. When there is no material before Court, only based on Ex.D.8 – document it is not possible to come to conclusion that the appellants are in possession of suit property.

27. The appellants nothing placed to show that they are in joint possession of suit property. Oral and documentary evidence placed by the respondent clearly shows that they are in possession and enjoyment of suit property. Evidence which placed by the respondents before trial Court is sufficient to hold that the respondents are in possession and enjoyment of suit property.

28. The learned trial Judge after considering oral and documentary evidence placed before Court rightly came to conclusion that the respondents are in possession and enjoyment of suit property. The learned trial Judge justified in holding that the respondents are in possession and enjoyment of suit property and also decreeing the suit of respondents. Hence, **I answered point No.1 & 2 in the affirmative.**

29. **Point No.3:** - The learned trial Judge after going through the oral and documentary evidence placed by both parties, discussed entire case and also assigned proper and cogent reason to arrive conclusion. On perusal of grounds urged by the appellant, I have not found any ground to interfere into the impugned Judgment and decree passed by the learned trial Judge. The

learned trial Judge assigned proper and cogent reason to arrive proper conclusion. Hence, **I answered point No.3 in the negative.**

30. **Point No.4:** - In view of the findings on point No.1 to 3, I proceed to pass the following:

ORDER

**Appeal filed under Order XLI(1) r/w
Section 96 of CPC is hereby dismissed
with cost.**

**The impugned Judgment and
decree dated: 09.01.2025 in
O.S.No.440/2018 passed by the learned
IV Addl. Civil Judge & JMFC.,
Bhadravathi is hereby confirmed.**

Draw decree accordingly.

**Office to return TCR to the trial
Court along with copy of the Judgment.**

*(Dictated to the Stenographer, typed by her, corrected and then pronounced by me, in
the open Court on this the 1st day of September, 2026)*

(Raghavendra.D)
Prl. Senior Civil Judge & JMFC,
Bhadravathi.

P.T.O.

ANNEXURE**List of witness examined on behalf of Appellants/defendants:**

DW-1: Sri.Aslam Sab

**List of documents exhibited on behalf of respondents/plaintiffs
continue from LCR in O.S.No.440/2018 Ex.P.1 to P.10): -**

Ex.P.11: RTCs(2) (confronted to DW-1)

Ex.P.12: Mutation extract (confronted to DW-1)

**List of documents exhibited on behalf of appellants continue
from LCR in O.S.No.440/2018 Ex.D.1 to D.7): -**

Ex.D.8: Online copy of sale deed dated: 5.8.2008

(Raghavendra.D)
Prl. Senior Civil Judge & JMFC,
Bhadravathi.