

KASM310011782020



Govt. of Karnataka **TITLE SHEET FOR JUDGMENT IN SUITS** [C.R.P.611.50]

Form No.9(Civil)
Title Sheet for
Judgment in Suits
(R.P.91)

**IN THE COURT OF I ADDITIONAL CIVIL JUDGE AND JMFC,
BHADRAVATHI, AT: BHADRAVATHI**

Present:

**Smt. Nasira Banu, B.A.(Law), LLB.
I Addl. Civil Judge and J.M.F.C.,
Bhadravathi.**

ORIGINAL SUIT No.210/2020

Dated on the 24th day of August, 2026

PLAINTIFFS:

1. M.K. Shivakumar,
S/o. late M.H. Kenchapa.
Aged about 52 years,
Working at Akashavani,
R/o Devaraj Arasu Extension,
Ambedkar Circle,
Main Road, Bhadravathi.
2. M.K. Ravikumar,
S/o late M.H. Kenchapa.
Aged about 37 years,
R/o. Siddaruda Nagara,
Bhadravathi.

(By Sri.ANT, Adv.,)

V/s**DEFENDANTS**

1. Smt. Gangalakshamma,
W/o. late Sanna Nanjaiah
aged about 55 years,
2. Smt. Rukmini
D/o late Sanna Nanjaiah
aged about 35 years,
3. Nanjundeshwara,
S/o late Sanna Nanjaiah
aged about 32 years,
4. Govindaraju,
S/o. late Sanna nanjaiah
Aged about 55 years,

All are residing at
Ambedkar Nagara,
Old Town, Bhadravathi.

(By. Sri. ANS Advocate)

Date of Institution of suit	: 06.07.2020
Nature of the suit	: Permanent injunction.
Date of the commencement of recording of the evidence	: 03.12.2024
Date on which the Judgment pronounced	: 24.08.2026
Total Duration	: <u>Year/s</u> <u>Month/s</u> <u>Day/s</u>
	06 01 18

PRESIDING OFFICER

J U D G M E N T

The plaintiffs have filed this suit for the relief of permanent injunction to restrain the defendants from interfering with suit 'B' schedule property.

SCHEDULE PROPERTY

A. The property, which is consisting of Mangalore tiled House with site situated in municipal khata Number 954, assessment number 1063 situated at Ambedkar Colony, Old Town, Bhadravathi measuring East to West : 15½ feet and towards north to South: 57 feet which is bounded by:

East	:	Conservancy road
West	:	Road.
North	:	'B' suit schedule property.
South	:	Property of Mylarappa

B. The site property, consisting of 3 coconut tress, two mango trees and 1 amla tree with the laterine pit and toilet situated in present Katha number 1855 in ward No.6, measuring 15½ X 70 feet bounded by:

East	:	Conservancy road
West	:	Road.

North : Property of defendants.
South : Suit 'A' schedule property.

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

The plaintiffs are brothers and they are in joint possession of suit 'A' schedule property. Towards hind portion of suit 'A' schedule property i.e., towards the northern side there was a vacant site property which is measuring 15½ feet X 70 feet. The said property is 'B' schedule property. The said property is merged with suit 'A' schedule and is in possession of plaintiffs. As such the plaintiffs are in possession and enjoyment of suit 'A' and 'B' schedule property totally measuring 15½ feet x 127 feet. Originally the father of plaintiffs by name M.H. Kenchappa S/o Hanumanthappa got purchased suit 'A' schedule property from his vendor under registered sale deed dated:26.06.1990. As on the date of sale deed itself the suit 'B' schedule property was in existence which was under unauthorized possession and enjoyment of plaintiffs' father by way of planting 3 coconut trees, 2 mango trees and 1 amla tree which are yielding fruits. The father of plaintiffs also built latrine pit with the toilet room in 'B' schedule property. Since the date of purchase of 'A' schedule property, the family members of plaintiffs are

in possession and enjoyment of both 'A' and 'B' schedule property without interference by anybody. The defendant no.1 is mother and other defendants are her children. Towards northern side of 'B' schedule property the property of defendants measuring 15½ feet X 57 feet which is consisting of house and site property is in existence. The said property originally belonged to the husband of defendant No.1. Though the defendants are very well aware about possession and enjoyment of plaintiffs over 'B' schedule property, in order to grab the said property they have often and often tried to interfere with the said property which has been resisted by the plaintiffs. The defendants are trying to interfere with the 'B' schedule property which is resisted by the plaintiffs. On enquiry the plaintiffs came to know that behind the back of plaintiffs without proper procedure, the father of defendant no.1 got illegal grant certificate in respect of 'B' schedule property even though the plaintiffs are in possession of the same. After the death of husband of defendant no.1, the defendants got changed revenue records with respect of 'B' schedule property in their names jointly. After securing documents from CMC, Bhadravathi, it came to know that defendants colluded together and in order to grab the property of plaintiffs have

created documents. The plaintiffs have given several applications to CMC and other authorities seeking cancellation of revenue records which is standing in the name of defendants relating to 'B' schedule property. The applications given by the plaintiffs to the authorities are still pending for consideration. On 02.07.2020, by the guise of grant certificate and revenue entry, the defendants tried to interfere with 'B' schedule property by damaging latrine pit and also toilet. The illegal acts of defendants were resisted by the plaintiffs with great difficulty. The defendants are supported by men and money power. The plaintiffs are law-abiding citizens. Without assistance of court, the plaintiffs cannot protect their property. On these grounds, prayed to decree the suit with costs.

3. The defendants appeared through their counsel and filed written statement.

4. **The case of the defendants is as under:**

The defendants denied plaint averments and contented that the father of plaintiffs by name Kenchappa S/o Hanumanthappa had 6 children by name are M.K. Shivakumar, Pushpalatha, Nirmala, Lalitha,

Savithramma and M.K.Ravikumar. The plaintiffs have not shown their names in the plaint. Hence, the suit is bad for non-joinder of necessary parties. There are many criminal cases pending against the plaintiff no.1 and he has a criminal background. Suit 'A' schedule property is having Khata No.954 in CMC, Bhadravathi, but the plaintiffs have not produced documents. The plaintiffs are not in possession of suit 'A' schedule property. The suit 'B' schedule property belonged to CMC jurisdiction. The suit 'B' schedule property do not belong to the plaintiffs. The plaintiffs have not sought for the relief of declaration, hence the suit is not maintainable. The property situated in Ward No.6, measuring 15½ x 57 feet with tiled house, measuring 15½ x 27 feet belong to the defendants. They constructed house and left some vacant space. The said property belonged to the father of defendants by name Sanna Nanjaiah S/o late Nanjaiah. After his death the said property belong to the defendants. Property measuring 16½ x 70 feet belong to the defendant No.4. The said property is granted in the name of father of defendants by name Sanna Nanjaiah and Khata is mutated in his name. Thereafter, said property is transferred to defendant no.4 in partition. After the death of Sannananjaiah, defendant No.4 is in possession and

enjoyment of said property. In order to grab the property of defendants, the plaintiffs have filed present suit. On these grounds pray to dismiss the suit with costs.

5. On the basis of the rival pleadings; My learned predecessor has framed the following issues:

ISSUES

1. Whether the plaintiffs prove that they are in exclusive possession of both Suit Schedule 'A' and 'B' properties as on the date of filing of this suit?
2. Whether the plaintiffs further prove the alleged interference of the defendants?
3. Whether the defendants prove that the suit is bad for non-joinder of necessary parties?
4. Whether the defendants further prove that the mere suit of the plaintiffs for permanent injunction is not maintainable without seeking the relief of declaration?
5. Whether the plaintiffs are entitled for the relief of permanent injunction as sought for?
6. What order or decree?

6. In order to prove their case, the plaintiff No.1 got examined as PW1 and also got examined two witnesses by name Mallikarjuna and

Chandrappa as PW.2 and PW.3. The Plaintiffs got marked following 15 documents as Ex.P1 to 15.

Sl.No.	Exhibits	Particulars of documents
1	Ex.P1	Tax paid receipt
2	Ex.P2	Tax assessment form
3	Ex.P3 to 6	Application given before the Tahasildar and CMC., Bhadravathi.
4.	Ex.P7 to 11	Photographs
5.	Ex.P12	CD
6.	Ex.P13	Agreement
7.	Ex.P14	Sale deed
8.	Ex.P15	Tax paid receipt

7. On the other hand the defendants got examined defendant No.4 as DW1. The defendants got marked following 11 documents as Ex.D1 to 11.

Sl.No.	Exhibits	Particulars of documents
1	Ex.D1 and 2	Sale deeds
2	Ex.D3	Demand register extract
3.	Ex.D4 to 6	FIR

4	Ex.D7	Form No.3
5	Ex.D8	Notice
6	Ex.D9	Order passed by CMC., Bhadravathi
7	Ex.D10	Demand register
8	Ex.D11	Form No.3

8. After closing the evidence of both parties, the counsels for plaintiffs and defendants submitted arguments.

9. Perused entire records and in the facts and circumstances of the case, the issues framed in the suit are answered as hereunder;

Issue No.1 : In the Negative

Issue No.2 : In the Negative

Issue No.3 : In the Negative

Issue No.4 : In the Affirmative

Issue No.5 : In the Negative

Issue No.6 : As per final order, for the following:

REASONS

10. **ISSUE No.1:** The plaintiffs have filed this suit for the relief of permanent injunction to restrain the defendants from interfering with 'B' schedule property. The plaintiffs have not claimed any relief in

respect of suit 'A' schedule property. The contention of plaintiffs is that they are the brothers and they are in joint possession of suit 'A' and 'B' schedule property totally measuring 15½ X 127 feet. It is the case of plaintiffs that the father of plaintiffs by name M.H. Kenchappa S/o. Hanumanthappa purchased suit 'A' schedule property under registered sale deed and he was in possession of suit 'B' schedule property unauthorizedly by planting coconut trees, mango trees, amala tree and dug latrine pit and constructed toilet room in 'B' schedule property. The plaintiffs further contended that the defendants have illegally created grant certificate in respect of 'B' schedule property and by virtue of said grant certificate they are attempting to interfere with the possession of plaintiffs over 'B' schedule property. The defendants denied plaintiff averments and they contended that the plaintiffs are not in possession of 'B' schedule property.

11. In order to prove their case, the plaintiff No.1 got examined himself as PW1 and also got examined two witnesses by name Mallikarjuna and Chandrappa as PW2 and 3. The PW1 by filing affidavit reiterated the plaintiff averments in his chief examination affidavit. In

support of their oral evidence, the plaintiffs have produced 15 documents. The contention of plaintiffs is that their father purchased suit 'A' schedule property under registered sale deed. To show the same, the plaintiffs have produced sale deed dated 26.06.1990. The said document is marked as Ex.P14. As could be seen from said document, the sale deed is executed in favour of M.H Kenchappa by T. Rajanna S/o Thimmaiah. As could be seen from said document, it is stated that the property bearing Khata No.954 Assessment No.1063 situated at Bhadravathi Town measuring 15½ X 57 feet is sold in favour of father of plaintiffs. In the said document, it is mentioned that there exists a house measuring 15½ X 30 feet. The boundaries is mentioned in the sale deed as East: Conservancy Road, West: Harijana Colony Road, South: House of Mylarappa and to the North: house of Nanjappa. Thus, it shows that the father of plaintiffs purchased Suit 'A' schedule property from one T. Rajanna. The boundaries shown in the sale deed and suit 'A' schedule are not in consonance with each other. In the suit 'A' schedule, to the north it is mentioned as suit 'B' schedule property i.e. Khata No.1855 of Ward No.6, but in the sale deed it is mentioned as house of one Nanjappa.

12. The plaintiffs have produced Ex.P13. As could be seen from the said document, it is an agreement wherein it is stated that T. Rajanna is transferring right over 15½ X 83 feet property. It is relevant to extract the portion of said agreement for better understanding. In the said document, it is mentioned that,

“ಸನ್ ಸಾವಿರದ ಒಂಬತ್ತನೂರ ತೊಂಬತ್ತನೇ ಇಸವಿ ಜೂನ್ ಮಾಹೆ ದಿನಾಂಕ 20 ರಂದು ಭದ್ರಾವತಿ ಹಳೆನಗರದ ಅಂಬೇಡ್ಕರ್ ನಗರದ ವಾಸಿ ಎಂ. ಎಚ್. ಕೆಂಚಪ್ಪ ಬಿನ್ ಹನುಮಂತಪ್ಪ ಆದ ಇವರಿಗೆ ಭದ್ರಾವತಿ ಹುತ್ತಾ ಕಾಲೋನಿ ವಾಸಿ ಟಿ.ರಾಜಣ್ಣ ಬಿನ್ ತಿಮ್ಮಯ್ಯ ಆದ ನಾನು ಬರೆಸಿಕೊಟ್ಟ ಜಾಗದ ಸ್ವಾಧೀನತೆಯ ಹಕ್ಕಿನ ವರ್ಗಾವಣೆ ಪತ್ರ ಏನೆಂದರೆ ತಾರೀಖು 20.06.1990 ರಂದು ರಿ.ಡಾ.ನಂ..... ರಂತೆ ನಿಮಗೆ ಕ್ರಯ ನೋಂದಾವಣೆ ಮಾಡಿಕೊಟ್ಟ ಸ್ವತ್ತಿಗೆ ಲಗತ್ತಾಗಿರುವ ಹೆಚ್ಚುವರಿ ಜಾಗವಾದ 15½ X 83 ಅಡಿ ಜಾಗ ಇದ್ದು, ಈ ಜಾಗ ಕೂಡ ನಿಮ್ಮ ಕ್ರಯಕ್ಕೆ ಸೇರಿಸಿಯೇ ಕೊಟ್ಟಿರುತ್ತೇನೆ. ಈ ಜಾಗದ ಬಗ್ಗೆ ನನಗೆ ಮುನ್ಸಿಪಾಲ್‌ನಿಂದ ತಾರೀಖು. 15-6-1987 ರಂದು ರಸೀದಿ ನಂಬರ್ 26985 ರಂತೆ ನನಗೆ ಮುನ್ಸಿಪಾಲ್‌ ನಿಂದ ನಿಗದಿತ ಮೌಲ್ಯಕ್ಕೆ ಕೊಡಲಾಗಿದ್ದು ಈ ರೀತಿಯ ನನ್ನ ಸ್ವಾಧೀನದಲ್ಲಿರುವ ಜಾಗದ ಮೇಲೆ ನನಗಿದ್ದ ಹಕ್ಕನ್ನು ಈ ಮೂಲಕ ಪರಿತ್ಯಾಗ ಮಾಡಿ ನಿಮ್ಮ ವಶಕ್ಕೆ ವಹಿಸಿರುತ್ತೇನೆ”.

13. Thus, the said document shows that the same is entered on 20.06.1990 i.e before execution of sale deed dated: 26.06.1990. It is also mentioned that adjacent to the property mentioned in sale deed

dated: 20.06.1990 there exists additional extent measuring 15½ X 83 feet and same is sold by T. Rajanna including the additional extent mentioned in Ex.P13. Thus, it is mentioned that T. Rajanna transferred right over said property in favour of father plaintiffs. But in the said Ex.P13 the date of earlier sale deed is mentioned as 20.06.1990. But as could be seen from Ex.P14 the same is mentioned as 26.06.1990. Further in the said document additional measurement is mentioned as 15½ feet X 83 feet. But Suit 'B' schedule property is described as 15½ feet X 70 feet. Moreover, Ex.P13 is an unregistered document whereby it is mentioned that right over property mentioned in the said document is conveyed in favor of father of plaintiffs. However, since it is an unregistered document no relevancy can be given to the same. In Ex.P13 except the extent of property, the number or its boundaries are not mentioned. Merely on the basis of unregistered mutual agreement right over property mentioned in the said document cannot be created.

14. The plaintiffs contended that their father was in unauthorized occupation of Suit 'B' schedule property by planting trees and by digging latrine pit and constructing toilet. However, there are no documents to prove the same.

15. The plaintiffs have produced assessment register, tax paid receipts which will not prove the ownership or possession over any property. The plaintiffs have produced application submitted before CMC, Bhadravathi for cancellation of khata mutated in respect of Ward No.6 of Ambedkar Nagar in the name of defendants. Thus, the documents on record produced by the plaintiffs do not show that the plaintiffs are in possession and enjoyment of Suit 'B' schedule property as contended in the plaint.

16. On the other hand, defendant No.4 got examined himself as DW1 and he got marked 11 documents as Ex.D1 to 11. Ex.D1 is the sale deed. The said document shows that T. Rajanna purchased 15½ X 57 feet property from Lakshmana and others on 30.08.1982. In the said sale deed boundaries mentioned as East: conservancy road, West: Harijana Colony road, North: Oni thereafter house of Hanumanthappa and backyard and south: Oni and thereafter house of Mylarappa. In the said document it is also mentioned that there is house measuring 15½ X 30 feet. The said property is the suit 'A' schedule property. Ex.D2 is the certified copy of Ex.P14 which is sale

deed executed in favor of father of plaintiffs. Ex.D3 shows the name of M.H Kenchappa in respect of khata No.73/82 measuring 27 X 15½ feet.

17. As could be seen from oral evidence, the PW1 deposed boundaries of Suit 'A' schedule property as to the east : road, west: his property, North: property of father of defendants and South : property of Mylarappa. The said boundary is not in consonance with the plaint schedule boundary. Further, he admitted that he has not produced E-swathu before the court. During his cross-examination, Ex.D3 is confronted to PW1 and he deposed that in Ex.D3, the extent of 'A' schedule property is mentioned as 15½ feet X 27 feet. As could be seen from said Ex.D3, the same is related to assessment number 1063 and the measurement is mentioned as 27 feet X 15½ feet. In the said property, the owner name is mentioned as M.H. Kenchappa S/o Hanumanthappa, i.e. the father of plaintiffs. But suit 'A' schedule property is described as 15½ feet X 57 feet. During his cross examination, PW1 deposed that he has produced documents to show that suit B' schedule property belong to them and deposed that he produced tax paid receipt to show the same. However, tax paid receipt is not a document relating to title or possession. Further, he deposed

that he has produced sale deed to show the extent of suit 'B' schedule property as 15½ feet X 70 feet. But no such documents are produced before the court. Further, he admitted that he had not produced khata extract relating to suit 'B' schedule property.

18. The plaintiffs contended that the defendants got grant certificate illegally in respect of 'B' schedule property though the plaintiffs are in possession of the same. The counsel for defendants posed question to the PW1 that what was the reason for not mutating khata in their names since 1987 to 2025. For which the PW1 deposed that he had other works and meanwhile the defendants got created the documents. The said contention of plaintiffs cannot be accepted since an ordinary prudent man will not keep quiet without obtaining khata in their names that too for more than 35 years.

19. The PW1 deposed that he filed Ex.P6 complaint in respect of 15½ feet X 70 feet property and the same is filed since the said property is encroached. He further deposed that CMC has not taken any action about the encroachment caused by the defendants. Thus, the cross examination and Ex.P6 shows that the PW1 is contending that the

defendants have encroached Suit 'B' schedule property. He also deposed that he filed present suit to get the possession of encroached property and also deposed that the suit 'B' schedule property is encroached. When such is the case, it is clear that the plaintiffs are not in exclusive possession of suit 'B' schedule property. In this case, the plaintiffs contended that the defendants' father got a grant certificate illegally. Hence, the plaintiffs should have approached the competent authority for cancellation of said grant certificate.

20. The PW2 deposed that the house of defendants is situated adjacent to the house of plaintiff and also deposed that at the time of filing of the suit the defendants were constructing shed behind their property and the defendants were in possession of the same. He also admitted that the CMC authorities have instructed the plaintiffs to cut trees which are causing obstruction to the defendants. He also deposed that the plaintiffs have cut the trees. The said evidence of PW2 is no way helpful to the plaintiffs in proving their possession over suit 'A' and 'B' schedule property. Thus, evidence on record show that plaintiffs have not produced any documents relating to suit 'B' schedule property. The documents produced by the plaintiffs in respect of suit 'A' schedule

property also stands in the name of their father. The plaintiffs have not produced any documents relating to suit 'A' and 'B' schedule property which are standing in their names. The Khata extract/Ex.D3 also stands in the name of father of plaintiffs. Admittedly father of plaintiffs has 6 children including the plaintiffs. When such being the case, how only the plaintiffs have acquired right over suit property is not explained by the plaintiffs. The plaintiffs have produced original sale deed to show their possession over suit 'A' schedule property. However, the boundaries mentioned in sale deed is not in consonance with suit 'A' schedule boundaries. Except stating that the plaintiffs are in possession of suit 'B' schedule property they have not produced any cogent evidence to prove the same. Hence, this court is of opinion that the plaintiffs failed to prove that they are in exclusive possession of suit 'A' and 'B' schedule properties within the boundaries given in the schedule. Accordingly, Issue No.1 is answered in the ***Negative.***

21. ISSUE No.2: The plaintiffs contended that they are in possession and enjoyment of suit 'A' and 'B' schedule property and the defendants are causing obstruction in their possession over the suit 'B' schedule property. However, the plaintiffs failed to prove their

possession over the 'B' schedule property. Hence, there is no question of interference by the defendants. Accordingly Issue No.2 is answered in the ***Negative.***

22. ISSUE No.3: The defendants contended that the plaintiffs have not made all the legal heirs of M.H. Kenchappa as parties to this suit. However, the present suit is filed for the relief of permanent injunction. Hence, their presence is not at all necessary to decide the above case. Therefore, the defendants failed to prove that the suit is bad for non-joinder of necessary parties. Accordingly Issue No.3 is answered in the ***Negative.***

23. ISSUE No.4: The defendants contended that mere suit for the relief of permanent injunction is not maintainable without seeking the relief of declaration. The defendants contended that the plaintiffs are not in possession of the suit 'B' schedule property. The plaintiffs also stated that the defendants got grant certificate illegally in the name of their father in respect of 'B' schedule property. It is settled principle of law that when the title of plaintiffs is under cloud mere suit for the relief of permanent injunction is not maintainable. The cross

examination of PW1 and Ex.P6 shows that the PW1 is contending that the defendants have encroached suit 'B' schedule property. He also deposed that he filed present suit to get the possession of encroached property and also deposed that the suit 'B' schedule property is encroached. When the plaintiff himself pleaded that the defendants got grant certificate in respect suit 'B' property illegally and PW1 admitted that suit 'B' schedule property is encroached by the defendants, they should have claimed the relief of declaration in respect of suit 'B' schedule property. Hence, this court is of opinion that the suit for the relief of permanent injunction without seeking the relief of declaration is not maintainable. Accordingly Issue No.4 is answered in the ***Affirmative.***

24. ISSUE NO. 5: For the reasons discussed on above issues since the plaintiffs failed to prove their case, they are not entitled for the reliefs claimed in the suit. Accordingly Issues No.5 is answered in the ***Negative.***

25. ISSUE No.6 :In view of the above discussions on above issues, this court proceeds to pass the following:

ORDER

The suit of the plaintiffs is hereby
dismissed with cost.

Draw decree accordingly.

(Dictated to the stenographer on computer, typed by her, corrected and then
pronounced by me in open court on this 24th day of August, 2026)

(Nasira Banu)
I Addl. Civil Judge & J.M.F.C.,
Bhadravathi.

ANNEXURE**Witnesses examined on behalf of plaintiff:-**

PW1 : M.K Shivakumar
PW2 : Mallikarjuna
PW3 : Chandrappa

Documents exhibited on behalf of plaintiffs:-

Ex.P1 : Tax paid receipt.
Ex.P2 : Tax self assessment form.
Ex.P3-6 : Application submitted before CMC.
Ex.P7-11 : Photos.
Ex.P12 : CD.
Ex.P13 : Agreement.
Ex.P14 : Sale deed.

Ex.P15 : Tax paid receipt

Witnesses examined on behalf of defendant:-

DW1 : Govindaraju

Documents exhibited on behalf of defendant:-

Ex.D1-2 : Sale deeds

Ex.D3 : Demand register

Ex.D4-6 : FIR

Ex.D7 : Form No.3

Ex.D8 : Notice

Ex.D9 : Order passed by CMC, Bhadravathi.

Ex.D10 : Demand Register

Ex.D11 : Form No.3

**I Addl. Civil Judge & J.M.F.C.,
Bhadravathi.**