



**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC.,  
AT GUBBI.**

**Dated: this the 01<sup>st</sup> Day of July 2026**

**Present: Smt. ANUPAMA D.**

**B.Com.,LL.B.,**

**Prl.Senior Civil Judge & JMFC**

**R.A.No. 65/2019**

**Appellant/s:**

Hanumaiah dead by LR's

1(a) Jayanna  
S/o Late Hanumaiah,  
Aged about 52 years,

1(b) Sarojamma  
W/o Late Rajashekhar,  
Aged about 40 years,

1(c) Harish  
S/o Late Rajashekhar,  
Aged about 26 years,

1(d) Girish  
S/o Late Rajashekhar,  
Aged about 24 years,

All are R/at Kodinagenahally,  
Nittur Hobli,  
Gubbi Taluk.

(Plaintiff in the trial Court)

**(By Sri. K.M.S., Adv.,)**

**V/s**

**Respondent/s: 1.**

Lalithamma  
W/o Late K.P Rajanna,  
Aged about 55 years,



2. K.R. Shivakumar,  
S/o Late K.P. Rajanna,  
Aged about 45 years,
3. K.R. Veena  
S/o Late K.P. Rajanna,  
Aged about 30 years,
4. K.R. Vishwanatha,  
S/o Late K.P. Rajanna,  
Aged about 31 years,

**All are R/at Kodinagenahally,  
Nittur Hobli,  
Gubbi Taluk.**

**(Defendants in the trial Court)  
(R1 & 2 By Sri. S.G., Adv.)**

|                                             |   |                                                                                                                              |
|---------------------------------------------|---|------------------------------------------------------------------------------------------------------------------------------|
| Date and nature of Order or Decree appealed | : | Against the Judgment and Decree passed by the learned Prl. Civil Judge & J.M.F.C., Gubbi, in O.S. 312/2009 dated: 18.03.2019 |
| Date of Institution of the appeal           | : | 09.07.2019                                                                                                                   |
| Date of Judgment                            | : | 01.07.2026                                                                                                                   |
| Duration of appeal                          | : | Year/s      Month/s      Day/s<br>06              11              23                                                         |

Sd/-  
**(Smt.ANUPAMA D.)**  
**Prl.Senior Civil Judge &**  
**JMFC., Gubbi.**



## **J U D G M E N T**

### **This is plaintiff's Appeal.**

The plaintiff had filed a suit against the defendants for the relief of recovery of possession of suit schedule property.

**2.** The suit schedule property is described in the plaint is as follows:

*2-00 Acres of land in Sy. No. 118, dry totally measuring 06 acres including Kharab of 29 guntas i.e., cultivable land 05 acres 19 guntas out of which 2-00 acres of land situated at Kodinagenahally, Nittur Hobli, Gubbi Taluk.*

### **3. The brief facts of the case of the plaintiff are;**

3(a) One late Mallegowda had three sons namely Hanumaiah, Nanjaiah and Chikkanna and they were all divided during their lifetime and living separately. The said Nanjaiah had a son namely



Doddahanumanthaiah through his wife Narasamma. The said Nanjaiah and his wife Narasamma are no more. The said Doddahanumanthaiah has got seven sons, namely Hanumaiah the plaintiff, Nanjaiah, Mallaiah, Sanjivaiah, Chikkahanumanthaiah, Nagarajaiah and Chandraiah, and all are constituted a Hindu undivided family. The said Nanjaiah who was the second son of Doddahanumanthaiah died leaving behind him, his wife Gangamma and two sons namely Range Gowda and Doddahanumanthaiah. The said Mallaiah who was none other than the third son of Doddahanumanthaiah also died leaving behind his wife Gangamma and two sons namely Nagaraju and Iranna. Sanjeevaiah who was none other than the fourth son of Doddahanumanthaiah also died leaving behind his wife Gangamma and a son named Vijay Kumar as his legal representatives. All the said persons are living together in a joint



family. Therefore this suit is filed by the plaintiff for and on behalf of entire joint family.

**3(b)** The suit schedule property originally belonged to one Kempamma, wife of Doddahanumanthaiah of Kodinagenahalli Village. This property was succeeded by her through succession after death of her husband Doddahanumanthaiah. The plaintiff's family owned number of ancestral properties and they are all intensive agriculturists. Out of the income derived from the ancestral properties, father of plaintiff Doddahanumanthaiah had purchased the suit survey number property for valid consideration from Kempamma under the registered sale deed dated: 06.07.1946. Since the date of purchase father of plaintiff Doddahanumanthaiah was in possession and enjoyment of the scheduled property. After his



death plaintiff and his brothers have succeeded the suit property under succession. Since then, the plaintiff and his brothers are cultivating the suit schedule property in joint. But, khatha and pahnis are still standing in the name of Doddahanumanthaiah.

**3(c).** It is further contended that the husband of defendant no. 1 and father of defendant no. 2 to 4 had filed suit against plaintiff for the relief of declaration of title and for permanent injunction in respect of 2 acres of land in suit No. 118 before this court in OS 22/1983, basing on the alleged registered sale deed said to have been executed by one Sidhalingappa on 28.02.1958. Said suit came to be decreed on 31.07.1991. Aggrieved by the judgment and decree passed by this Court, the plaintiff had filed a regular appeal before the



Principal Civil Judge, Tumakuru, in RA No. 59/1991. The said appeal came to be allowed in part by confirming the relief of permanent injunction granted to the husband of defendant no. 1 and the relief of declaration has been set aside, by virtue of judgment dated: 16.02.2002. Aggrieved by the judgment and decree passed in RA No. 05.09.1991, the plaintiff has preferred RSA No. 497/2002 before the Hon'ble High Court of Karnataka and same was dismissed on 09.04.2008 as not pressed.

**3(d).** It is further contended that, the judgment and decree passed by the Principal Sr. Civil Judge, Tumkur in RA No. 59/1991 with regard to setting aside the judgment and decree, of OS 22/1983 with respect to declaration is concerned, holds good till now. The husband of plaintiff or any other person had not challenged the same before any authority. Whereby the



plaintiff has filed this suit for recovery of possession of the suit schedule property from the defendants. On these grounds he prays to decree the suit.

**4.** The defendants have filed written statement wherein they have admitted the proceedings of OS 22/1983, RA No. 59/1991 and RSA No. 497/2002 and rest of the contents except the origin of property by Kempamma have been denied by The defendants.

**4(a).** The defendants have further contended that the defendant is in possession and enjoyment of the suit schedule property since more than 50 years, without any interference from any person including the plaintiff.

**4(b).** It is further contented that, the suit schedule property originally belongs to one Kempamma. She sold the said property in favour of one Doddahanumanthaiah s/o Nanjaiah



through a registered sale deed dated: 01.07.1946. The said Doddahanumanthaiah, s/o Nanjaiah had sold the said property in favour of one Siddalingaiah, s/o Rudraiah, through registered sale deed dated: 28.02.1958. Accordingly, Khata and RTC have been changed into the name of Siddalingaiah vide M.R.No. 22/1957-58. The said Siddalingaiah s/o Rudrappa had sold suit schedule property in favour of one Rajanna s/o late Puttanna on 06.08.1974. The said Rajanna was in peaceful possession and enjoyment of the said property. The said Rajanna is husband of defendant no. 1 and father of other defendants. Since the date of purchase Rajanna and defendants are in peaceful possession and enjoyment of the same. But RTC of the said property is still standing in the name of Siddalingaiah s/o Rudraiah. But, in column number 12(2) of RTC the name of



Rajanna has been incorporated. It is further contented that the plaintiff and his brothers have caused interference into the possession of husband of defendant no. 1. Thereby he had filed suit in OS 22/83 before this court. The said suit came to be decreed. Aggrieved by the said judgment and decree, the plaintiff and his brothers have preferred an appeal in RA No. 59/1991 and the said appeal came to be partly allowed by confirming the judgment with regard to permanent injunction and by setting aside the judgment with regard to declaration is concerned. The plaintiff again has preferred Regular second appeal before the Hon'ble High Court of Karnataka in RSA 497/2002 and he has withdrawn the said appeal. Hence the perpetual injunction granted by the Principal Civil Judge and CJM, Tumakuru stands confirmed even till today.



**4(c).** It is further contented that, the Senior Civil Judge in his Judgment in RA No. 59 of 1991 at page number 21, has clearly observed that the father of defendants has sold the suit property in the year 1958 and the defendants have not challenged the alienation made by their father within 12 years from the date of execution of sale deed or within 3 years after they attained majority and hence the present suit is barred by limitation. The plaintiffs have filed this suit with false allegations only to cause harassment to the defendants. Since the date of purchase of property by Rajanna i.e. on 06.08.1974, he and the defendants are in peaceful possession and enjoyment of the same. After death of Rajanna, the defendants, being his successors, have succeeded the suit property. By way of succession and enjoying the same till today. On



these grounds they pray to dismiss the suit of the plaintiff.

**5.** Upon rival contentions the Trial Court has framed the following three issues.

### **ISSUES**

1. Whether the plaintiff is entitled for recovery of possession of suit schedule property from defendants?
2. Whether plaintiff is entitled for the relief as claimed in the suit?
3. What order or decree?

**6.** In order to prove the case, the plaintiff has got examined himself as PW1 and he produced as many as 8 documents and got marked the same as Exhibits P1 to P8. On the other hand, The second defendant got examined himself as DW1 and he produced as many as 56 documents as per Exhibits D1 to 56. The defendants have also got examined three more witnesses namely Renukaiah,



M. S Jagadeeshappa and R.K. Dayanand as DWs 2 to 4 in support of their case. The DW1, got marked 61 documents as per Exhibits D1 to 61. After having heard both sides the learned Trial Judge has dismissed the suit by answering issue number 1 and 2 in negative. Aggrieved by the same the plaintiff has preferred this appeal on the following grounds.

## **7. THE GROUNDS OF APPEAL**

1. The impugned Judgment and decree is opposed to the facts and probabilities of the case and also against the principles of natural justice.
2. The appellant herein has produced Exhibit P7, the copy of Judgment passed in RA No. 59 of 1991 and the decree, wherein it is clearly observed that the husband of defendant is not the absolute owner of the suit



property. But, the Trial Court did not considered the said observation and dismissed the suit erroneously.

3. The appellant has filed this suit for recovery of possession on the findings given in the judgment and decree passed in RA No. 59/1991, which remained unchallenged by the respondents.
4. The said findings made in favour of the appellant is not reversed. Hence the plaintiff is the absolute owner of the suit schedule property. The Trial Court without considering the said aspect in a proper perspective has dismissed the suit erroneously.
5. Once there is a finding with respect to title of property went in favour of the appellant in RA No. 59 of 1991, it is needless to seek the relief of declaration once again against the respondents.
6. That in spite of the same the Trial Court has come to the wrong



conclusion that the appellant has not sought for the relief of declaration and dismissed the suit erroneously.

7. The Judgment and Decree passed in R. A. 59/1991, wherein it is clearly held that the alleged sale deed to have been made by Doddahanumanthaiah s/o Nanjaiah in favour of Siddalingaiah on 28.02.1958 is not binding on the plaintiff, then the question of once again seeking the relief of declaration does not arise.
8. The Trial Court did not considered the sale deed i.e. Exhibit P1 and Exhibit P2 the record of rights and index of land wherein it is clearly forthcoming the name of father of appellant as owner in possession and enjoyment of the suit schedule property.
9. The trial Court without considering the said entries has dismissed the suit erroneously.
10. The Trial Court did not considered the certified copies of sale deed i.e. Exhibit



D4 produced by the defendants, wherein it is clearly forthcoming that the father of appellant Doddahanumanthaiah has purchased the entire extent of 5 acres 18 guntas in Survey No. 118 and dismissed the suit erroneously.

**8.** The Trial Court did not considered the oral and documentary evidence adduced by the appellant and erroneously decreed the suit. On these grounds, he prays to allow the appeal and grant the reliefs sought by him.

**9.** In this case once the plaintiff had filed this appeal and the same came to be dismissed by virtue of Judgment dated: 06.07.2022. Aggrieved by the same the plaintiff had preferred R.S.A before the Hon'ble High Court of Karnataka in R.S.A No. 497/2002 and the said R. S. A. came to be dismissed and the Judgment and Decree of this court is set aside as non-est and the matter



came to be remanded back to this court for fresh disposal in accordance with law after considering the application filed on 10.09.2010 to bring the legal representatives of the deceased appellant on record. After securing the TCR this court has considered the IAs and provided opportunity to the legal heirs of appellant to proceed with the case. They have represented through their counsel.

**10.** In this case, the opponent has filed an application under Order VI Rule 17 of CPC. On the other hand, the respondents have filed objections to the said petition. I have heard both sides on this IA and also on merits.

**11.** *The points that would arise for my consideration are;*

1. Whether the Appellants prove their due diligence to consider the application filed under Order VI Rule 17 of CPC at this appellate stage?



2. Whether the relief sought in IA filed under Order VI Rule 17 attracts the point of limitation as contended by the respondents?

3. Whether the Judgment and decree passed by the Trial Court is erroneous and not in accordance with Law thereby calls for interference by this appellate court under appellate jurisdiction?

4. What order?

**12.** After having heard both sides and on meticulous verification of TCR, I have answered the above points as under:

Point No. 1 : In Negative

Point no. 2 : In Affirmative

Point no. 3 : In Negative

Point no. 4 : As per the final order for  
the following;

**13. POINT NOS. 1 AND 2:** Here in this case, the appellant has filed an interim



application under Order VI Rule 17 CPC by seeking permission of this court to carry out amendment in order to incorporate one more relief for declaration of their title over the suit schedule property.

**13(a).** It is stated in the affidavit that, the plaintiff has filed this suit against the defendants for the relief of recovery of possession of suit schedule property. He has explained all the details of the plaint in the affidavit and further contended that till today the appellant and now the LRs of appellant are in possession and enjoyment of the suit schedule property. By suppressing the real material facts the respondents are causing interference over the suit schedule property. Hence he has filed this application by seeking the relief sought in the application. It is his further contention that, due to typing mistake



Paragraph number 2 of the prayer has been left out. This mistake is a bonafide one and not intentional. The proposed amendment is very much necessary to decide the matter on merits. On these grounds he prays to allow the application.

**14.** Per contra, the respondents have filed objections to this application wherein they have contended that, the present application at this juncture is wholly misconceptions and not maintainable either in law or on facts. The present appeal was reopened only pursuant to the judgment passed in RSA No. 497 of 2002 passed by the Hon'ble High Court of Karnataka, whereby the matter was remitted to the first appellate court for fresh disposal in accordance with law. In the said judgment, the Hon'ble Court specifically observed that the judgment and decree of the first appellate court is set



aside as non-est and the matter is remitted back to the first appellate court for fresh disposal in accordance with law. The Hon'ble Court has specifically directed to consider the application filed on 10.09.2020 for bringing the legal representatives of the deceased sole appellant on record. Hence scope of remand is limited and specific. It is further contented that it is a settled principle of law, that when a matter is remanded with specific directions, the trial court cannot travel beyond the scope of remand. Procedural powers cannot be exercised contrary to express directions issued by the Superior Court.

**14(a).** It is further contented that the original suit in OS No. 312/2009 was filed for recovery of possession. Now, by way of amendment the appellants seek to introduce a new substantive relief of declaration of title. It



is well settled that an amendment which changes the nature and character of the suit cannot be permitted at appellate stage. The relief of declaration is an independent and substantive relief governed by limitation under Article 58 of the Limitation Act. Such relief cannot be introduced at this belated stage, particularly after trial, decree, appeal and remand. It is further submitted that the alleged cause of action is Traces back to transactions of 05.08.1974 and earlier proceedings in OS 22/1993 and RA 59/1991. If at all the appellants intended to seek declaration of title, the same ought to have been sought in the original plaint itself. An amendment which is barred by limitation cannot be permitted under Order VI Rule 17 of CPC.

**14(b).** It is further contented that the opponents have consciously filed the suit only



for recovery of possession. Now, after decades of litigation and adverse findings, they are attempting to cure fatal defects by introducing a declaratory relief. The plea that paragraphs were left out due to typing mistake is untenable and unsupported by any material. This is clearly an attempt to fill up lacunae in the case.

**14(c).** It is further contended that the respondents have contested this suit for several years based on the original pleadings. Allowing the present amendment would, introduce a new cause of action, reopen factual issues, require fresh evidence, prejudiced vested rights accrued to the respondents. The amendment would result in serious injustice to the respondents and cannot be compensated by costs. On these grounds, they pray to dismiss the application.



**15.** On this application, I have heard both sides and carefully gone through the materials available on record. In this case the plaintiff is seeking the relief of recovery of possession. The earlier proceedings held between plaintiff and the husband of plaintiffs and father of plaintiff and Husband of defendant no. 1 is not in dispute. Thereby it is clear that the plaintiff and now the legal heirs had knowledge about the earlier suit held between the husband of defendant no. 1 and the plaintiff. Thereby it is clear that there is a cloud on the title of the suit schedule property. In spite of knowing such fact, the plaintiff had not filed necessary application before the court to amend his pleadings by adding one more prayer with regard to declaration of his title is concerned.

**15(a).** In **Muddasani Venkata Narsaiah (D) Th. Lrs v. Muddasani Sarojana**



**AIR 2016 SC 2250: 2016 Part XII SCC 288,**

the Hon'ble Apex Court has directly held that,

“unless there is a serious cloud over the title of the plaintiff, there is no need to file a suit for declaration of title. The suit for possession was maintainable.” The court further clarified that,

“when a suit for possession is filed on the strength of a valid title deed, a separate prayer for declaration is unnecessary. In another

landmark judgment which is reported in **2008**

**Part IV SCC 594** held between **Anathula**

**Sudhakar v. P. Buchi Reddy (Dead) by L. Rs**

**AIR 2008 SC 2033,** The Hon'ble Apex Court

has laid down the criteria for property suits. It

specified that “a declaration is required only

where there is a complicated dispute or a cloud

on the title, where the plaintiff has clear title

they can straight away file a suit for recovery of



possession or an injunction.” According to these two decisions, it is made clear that the plaintiff of the suit had knowledge about the cloud on the title. At the time of the suit held between him and the husband of plaintiff, it is an admitted fact that in RA No. 59/91, the Appellate Court has discussed with regard to the title of the parties and dismissed the judgment and set aside the judgment and decree passed by the Trial Court in OS No. 22/83 with regard to declaration of title of the plaintiff is concerned and confirmed the judgment and decree with regard to the permanent injunction is concerned. Thereby it is clear that at the time of passing of judgment in RA No. 59/1991 itself the plaintiff had knowledge about non-declaration of title in his favour and also in favour of the husband of defendant no. 1. Thereby it is clear that the



plaintiff ought to have been filed this application, in order to incorporate the details of one more prayer with regard to declaration of his title in the suit in OS 22/83 itself. Such being the case, now this application cannot be considered as contented by the respondents in their objections. The present proposed amendment attracts limitation as per Article 58 of Limitation Act, wherein this article speaks that the suit for declaration ought to have been filed within 3 years from the date when the right to sue first accrues. In this case, in the year 1989-91 itself, the plaintiff had knowledge about non declaration of his title in appeal i.e. RA No. 59/1991. Thereby it is clear that the plaintiff even though had knowledge about the same had not filed necessary application before the court. Hence he has utterly failed to prove his due diligence to consider the present



application. In my considered view, the present application attracts Article 58 of Limitation Act. Thereby the present application deserves to be dismissed. Hence I answered **Point No. 1 in Negative and Point No. 2 in Affirmative.**

**16. POINT NO. 3 :** The Trial Court has observed all these points in its Judgment. The Ld. Trial Judge has also come to a conclusion that, the suit for recovery of possession without declaration is not maintainable. Thereby the Trial court has dismissed the suit of the plaintiff. U/s 5 of Specific Relief of Act, 1963, a person entitled to the possession of specific immovable property can recover it by following the procedure laid down in the Code of Civil Procedure. As long as the plaintiff's ownership is backed by valid title documents and the defendant is merely a trespasser who has no legitimate legal claim to



the property, a separate prayer for declaration of ownership is unnecessary. It is the settled principle of law that, a formal prayer for a declaration of title is not a mandatory prerequisite in every possession suit. A person with clear ownership documents does not need to ask the court to declare their title unless there is already a serious cloud or legal defect casting doubt on it. If the plaintiff's title is undisputed, straightforward, or evidenced by valid title deeds, a bare suit for recovery of possession under sec. 5 of Specific Relief Act, 1963 is legally sound. IN such type of cases, maintainability of suit is strictly subject to the nature of the defence raised. As discussed by the Hon'ble Court in Buchi Reddy's case, if the defendant raises a serious dispute or a credible claim that puts a cloud over the plaintiff's title, a suit for mere recovery of possession will no longer be sufficient.



In such highly contested scenarios, the plaintiff is legally required to seek a formal declaration of title as a primary relief. But in this instant case, even though the plaintiff had knowledge that there is cloud over the title of property and litigation was held, he had not come forward to seek the relief of declaration in the original suit itself. The reasons assigned the affidavit filed in support of the IA that it was a typographical error and not intentional one, also not satisfied. Hence, the Ld. Trial Judge has rightly dismissed the suit of the plaintiff. The grounds urged in this appeal are also not satisfactory. It is contended in the grounds, that, the court of Sr Civil Judge, Tumkur has already held that, the husband of D1 has no title over the suit schedule property, On the basis of the opinion of the Ld. Judge in that RA, the plaintiff has filed this suit. It is true that, the Ld. Judge has discussed that, the husband of



D1 has no valid title, but that is not sufficient to hold that, the plaintiff has a valid and legal title over the suit schedule property. The plaintiff cannot use the weakness of the defendant to prove his case. He himself has to prove his case with all the cogent materials before the court.

**16(a)** Further, in the cross examination, the PW1 has feigned his ignorance about the sale of suit schedule property infavour of one Siddalingappa but he has not denied the same. When the title itself is under cloud, the initial burden to prove it is on the party who asserts the claim. But, in this suit, the plaintiff has produced the revenue documents and the certified copies of Judgments and Decrees of the court. Except these documents, he has not produced a single piece of document to prove his title. As per the above discussion, where



there is no cloud over the title, the suit of the plaintiff might have been considered as maintainable. But, the litigations were held between the plaintiff and husband of defendant no. 1. In spite of having knowledge about the same, the plaintiff did not even try to file necessary application for amendment of his pleadings. Now after one round of litigation, he has come up with this IA. It is the settled principle of law that, title of the party should not be kept in dark. But, where there is no document available to consider the same, this court cannot come to a conclusion that, the plaintiff has valid and legal title over the suit schedule property. On the other hand, the defendant no.1 has produced Exs D4 to 6, the certified copies of sale deeds held between Kempamma and Doddahanumanthaiah, Doddahanumanthaiah and Siddalingaiah and



Siddalingaiah and Rajanna respectively. The last document i.e., Ex. D6 is in the name of husband of Defendant. The date of this document is 06.08.1974. Hence, this court can incline to believe the contents of this document as it is 30 years old document having evidentiary value as per sec. 90 of Indian Evidence Act. But as such this is the suit of the plaintiff for recovery of possession and there is no counter claim by the defendants, the trial court has not considered these documents, and rightly dismissed the suit of the plaintiff. Hence, I do not find anything erroneous in the discussion made by the Ld. Trial Judge in her impugned Judgment. Hence, interference does not called for in the same. Hence, I have answered this Point for consideration in **Negative.**



**17. POINT NO. 4:** For the foregoing reasons I proceed to pass the following:

**ORDER**

Application filed by the appellant u/o VI rule 17 of C.P.C is hereby dismissed as not maintainable.

Accordingly, the regular appeal filed under order 41 rule 1 of CPC is hereby **DISMISSED.**

Consequently, the impugned Judgment and Decree passed on 18.03.2019 in O.S. 312/2009 by the learned Prl. Civil Judge and JMFC, Gubbi is hereby confirmed.

No order as to costs.

Office to draw decree accordingly.

Transmit the Trial Court records along with the certified copy of this



judgment and decree to the Trial  
Court, forthwith.

(Dictated to the Stenographer, transcribed, typed  
and printed by her, the script is corrected, signed  
and then pronounced by me in the open court on  
this the 01<sup>st</sup> Day of July 2026.)

Sd/-  
**(Smt.ANUPAMA D.)**  
**Prl.Senior Civil Judge &**  
**JMFC., Gubbi.**