



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

PRESENT: **Sri.VINOD KUMAR.M** BAL.,LLB,LLM.,
ADDL. SENIOR CIVIL JUDGE & JMFC
AT SIRA

RA.No.44/2017

Dated this the 13th day July – 2026

Appellant/s

B.R.Govindappa,
S/o late Rangappa,
Aged about 56 years,
R/at Bejjihalli Village,
Hulikunte Hobli,
Sira Taluk, Tumakuru District. (By **Sri.K.U.** Adv.)

V/s

Krishnappa,
S/o late Rangppa,
Aged about 66 years,
R/at Bejjihalli Village,
Hulikunte Hobli,
Sira Taluk, Tumakuru District. (By **Sri.C.H.J.** Adv.)

Date and nature of decree appealed against	Judgment and decree passed in O.S.No.122/2010 dated 20.09.2017 by the Addl. Civil Judge and JMFC, Sira.
Date of institution of the appeals	28-11-2017
Date on which the judgment was pronounced.	13-07-2026
Total duration	Year/s : Month/s : day/s
	08 07 15

Sd/-
(VINOD KUMAR. M)
Addl. Senior Civil Judge &
JMFC., Sira



:: J U D G M E N T ::

The present appeal filed by appellant/original plaintiff against respondent/original defendant U/sec. 96 R/w U/o XLI Rule 1 of CPC challenging the judgment and decree passed in O.S.No.122/2010 dated 20.09.2017 by the Addl. Civil Judge and JMFC, Sira.

2. For the sake of convenient and brevity, the parties would be referred to in this judgment as per their ranks before the trial court.

3. Brief facts of the case leading to appeal are as follows :

The appellant/original plaintiff filed this appeal challenging the judgment and decree passed in O.S.No.122/2010 dated 20.09.2017 by the Addl. Civil Judge and JMFC, Sira and set aside the said judgment and decree by allowing the same.

4. The contention of plaintiff in their plaint before the trial court that, he is absolute owner in possession and enjoyment of suit property having acquired under Hakku Patra issued by Panchayath. All the documents of suit property standing in the name of plaintiff includes paying taxes to Govt. But the defendant without having any right, title or possession over the suit property. The defendant illegally break open the back side door of the suit property and entered into possession, which is unlawful. It is necessary to disposes the defendant from possession of suit property and delivered the possession back.



The ownership of suit property was already decided in O.S.No.218/2004 and RA.No.33/2019. On these grounds the plaintiff constrained suit for Recovery of Possession.

5. After service of suit summons, the defendant appeared through their counsel and filed written statement by denied the contents of plaint.

6. The contention of defendant before trail court that, suit property is joint family property of plaintiff, defendant and other brothers. The defendant and his wife/Muddamma nor owner in possession of suit property and Khatha of the suit property stands in the name of defendant includes paying taxes to Govt., The suit property house is old and is in dilapidated condition. After demolishing the old house, the defendant constructed a house by obtaining grant under Ashraya scheme in the name of his wife. Since the defendant with wife and family members are in actual possession and enjoyment of suit property and question of interference does not arise. His elder brother/Thimmanna filed suit in O.S.No.218/2004 for partition and separate possession came to be dismissed. The plaintiff have no right, title or possession over the suit property. But illegally entered the name of plaintiff in Khatha extract of suit property. Now the plaintiff is making hectic efforts to disposes from possession of suit property. The plaintiff filed false complaint before Police in C.R.No.64/2010 in order to harass and disposes from possession of suit property. When the plaintiff is not in possession, he is not entitled for relief of



Permanent Injunction. On these ground, the defendant prays to dismissal the suit with exemplary cost.

7. On the basis of rival pleadings, the trail court has framed the following issues as hereunder:

I S S U E S

- 1. Whether the plaintiff proves that he is in lawful possession and enjoyment of the suit schedule property as on the date of suit?***
- 2. Whether the plaintiff further proves the alleged interference of obstruction by the defendant?***
- 3. Whether the plaintiff is entitled for the relief as sought for?***
- 4. What order or decree?***

Additional Issue No.1 dated 21.01.2014.

- 1. Whether the plaintiff proves that the defendant illegally entered into the possession of suit property by break opening the back side door of the same?***

8. After framing the issues by trail court, the plaintiff himself examined as PW.1 got marked as many as 16 documents at Ex.P.1 to 16 documents before the trail court. On other hand, defendant examined as DW.1 and got marked as many as 23 documents at Ex.D.1 to Ex.D.23. Closed the both side evidence before the trail court.



9. Thereafter, the trial court after hearing the arguments and perused the materials available on record to dismiss the suit of the plaintiff by passing a Judgment and decree on dated 20.09.2017.

10. Being aggrieved by the impugned judgment and decree passed in O.S.No.122/2010, the plaintiff/appellant preferred an appeal on the following:-

GROUND

1. The trial court erred in answering the issue No.1 to 3 and Additional issue No.1 in the Negative without considering the materials on record.

2. The trial court has erred in without appreciated the oral and documentary evidence of PW.1 to 3 & admission given by DW.1 & 2.

3. The trial court has disposing the suit neither sound nor convincing.

4. The trial court has failed to appreciate the previous statement in O.S.No.218/2004 and RA.No.33/2009.

5. The trial court has passed the Judgment and decree based on presumption and assumption.

6. The Judgment and Decree passed by trial court is erroneous, illegal, capricious, perverse and opposed to law.



11. Hence, on the above among other grounds, the original plaintiff/appellant in appeal prayed before this court to allow appeal and set-aside the impugned judgment and decree in O.S.No.122/2010.

12. After passing of the judgment in O.S.No.122/2010, the original respondent appeared through their counsel before this court after issued notice on the appeal. In the meantime, this court secured the entire record of O.S.No.122/2010 from the trial court and thereafter, heard the arguments of the counsel for appellant and that of learned counsel for respondent. Perused the entire materials available on record of the case.

13. In view of the grounds in the appeal made out by the appellant/plaintiff, the following points arise for my consideration :

P O I N T S

1. Whether the trial court has not consider the legal title of the suit property in the name of plaintiff and illegally occupied the possession of the suit property by defendant after break open the back side door as oral and documentary evidence led by plaintiff/PW.1 to 3 and admission of DW.1 & 2?

2. Whether judgment and decree passed by the trial court is apposed to law and same is arbitrary, capricious & perverse?

3. Whether the suit of the plaintiff is barred by limitation under article 65 of the act?



4. Whether the judgment and decree passed by the trial court calls for interference by this court?

5. What order or decree?

14. After scrutiny of the oral and documentary evidence placed on record and after hearing the arguments by both counsel, my findings to the above points are as follows :

- POINT NO.1** : In the **Partly Affirmative & Partly Negative**
- POINT NO.2** : In the **Negative**
- POINT NO.3** : In the **Affirmative**
- POINT NO.4** : In the **Negative**
- POINT NO.5** : As per final order
for the following :

REASONS

15. POINTS NO.1 to 4 : Since all these points are interconnected with each other and involved common discussion, they are taken up together for consideration in order to avoid repetition of facts and discussion.

16. The learned counsel for appellant argued that, the appellant filed suit for Possession and Injunction in respect of encroachment portion in suit property. Originally suit property purchased by appellant/Govindappa under sale deed dated 15.01.1983 from vendor/Kapinappa for valuable sale consideration. All the documents got transferred in his name.



But the respondent illegally occupied the suit property by break open the back door of the house and got changed illegal documents in his name. The trial court has not at all consider the Ex.P.13/Sale deed in the name of appellant and failed to appreciate the oral nor documentary evidence. The trail court has not at all consider the article 65 of Limitation act. On these grounds, the counsel prays to allow the appeal by decree the suit.

17. I have gone through the records carefully and heard the arguments by counsel for the appellant and respondent in detail. From the record, it can be borne out that the plaintiff filed this suit before the trial court against defendant for recovery of possession and injunction. It was the case of plaintiff before the trial court that, he is owner in possession and enjoyment of suit property having acquired under sale deed dated 15.01.1983 and all the Panchayath documents got transferred in his name including paying taxes to concerned authority. But the defendant illegally occupied the possession of suit property towards southern side after break open the back door of the house. On other hand, the defendant contended that, he and his wife Muddamma nor owner in possession of suit property and constructed house under the Ashraya scheme. All the Panchayath documents got transferred in his name including paying taxes to concerned authority. But the brother of plaintiff by name Thimmanna filed suit in O.S.No.218/2004 for partition against him, defendant and other sister for partition came to be dismissed in respect of



family properties apart from item No.7 i.e., suit property. The present suit is filed on the instruction of brother Thimmanna without having any right in order to knock of the property.

18. In order to prove the case, the plaintiff led his evidence before the trial court by getting examined as P.W.1 thereby reiterating the contents in the plaint and in support of his testimony, he got marked documents as per Ex.P1 to Ex.P16. In the chief examination of PW.1 and plaint clearly contended that, he is lawful owner in possession and enjoyment of suit property having acquired under sale deed dated 15.01.1983. But in the cross-examination of PW.1 suggested in vernacular language as hereunder:

1983 ರಲ್ಲಿ ನಾನು ದಾವಾ ಸ್ವತ್ತನ್ನು ಕೊಂಡು ಕೊಂಡಾಗ ನಾನು ಮತ್ತು ಪ್ರತಿವಾದಿ ಜಂಟಿ ಕುಟುಂಬದಲ್ಲಿದ್ದೇವೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.

From the cross-examination of PW.1 categorically denied that, he and defendant were in joint family at the time of purchase the suit property in the year of 1983 but it is admitted by PW.1 and counsel for plaintiff about suit property was purchased under sale deed in the year of 1983. On other hand, DW.1 specifically admitted in his cross-examination in vernacular language as hereunder:

ದಾವಾದ ಸ್ವತ್ತನ್ನು ವಾದಿಯು ಕಪಿನಪ್ಪರವರಿಂದ ಕೊಂಡು ಕೊಂಡಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ. ಸಾಕ್ಷಿ ಮುಂದುವರೆದು ಅದನ್ನು ಒಟ್ಟು ಕುಟುಂಬದಲ್ಲಿದ್ದಾಗ ಕೊಂಡು ಕೊಂಡಿದ್ದೇವೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಸಾಕ್ಷಿಯು ಸದರಿ ಕ್ರಯ ಪತ್ರದ ದೃಢೀಕೃತ ನಕಲನ್ನು ನೋಡಿ ಒಪ್ಪಿಕೊಂಡ ಕಾರಣ ನಿಪಿ.13 ಎಂದು ಗುರುತಿಸಲಾಯಿತು.



From the clear admission of DW.1 itself establish that, the plaintiff/PW.1 purchased the suit property under Ex.P.13/Sale deed. But Ex.P.13/Sale deed executed at the time of joint family from joint income/nucleus. In order to prove the contention, the defendant/DW.1 never explained in written statement as well as chief examination about how the suit property has been purchased in the name of plaintiff under which source of income and its details. In support of contention DW.1 never produced any documents to show the suit property was purchased in the name of plaintiff from joint family income. Moreover that, Ex.D.1 to 23/Documents produced by DW.1 pertaining to suit property but not to say about suit property was purchased from joint family income. Such being the contention of defendant/respondent cannot be consider either before trial court nor this court on that point. In the further cross-examination of PW.1 nothing has been elicited to disprove the title of the suit property except possession in the hands of defendant, who already constructed the house under the Ashraya Scheme and all the documents stands in his name as per Ex.D.1 to 23.

19. In support of oral evidence PW.1 produced Ex.P.13/Sale deed dated 15.01.1983 clearly revels that, he purchased the suit property from Kapinappa for valuable sale consideration. Upon Ex.P.13/Sale deed, the Khatha and tax paid receipts got transferred in his name as per Ex.P.1 to 5. Even on perusal of Panchayath documents clearly revels that, the name of the



plaintiff stood entered his name in respect of suit property. On other hand, the defendant and counsel admits the Ex.P.13/Sale deed with Panchayath documents i.e., Ex.P.1 to 5 stands in the name of plaintiff. But only contended it is joint family property. In order to prove the said contention, the defendant/DW.1 never produced any documents to show the suit property was purchased in the name of defendant out of family income.

20. Mere perusal of Judgment passed by the trial court in para No.17 that, Ex.P.13/Sale deed clearly shows the plaintiff was purchased the suit property from Kapinappa for valuable sale consideration and all the Panchayath documents got transferred in his name as per Ex.P.1 to 5. But the trial court has well appreciated the documentary evidence of Ex.P.13/Sale deed nothing but title of the suit property in the name of plaintiff. In the finding of trial court has wrongly answered as negative instead of Affirmative in respect of title of the plaintiff over the suit property as per Ex.P.13/Sale deed only for the reason that, the plaintiff did not seek for declaration of title. On other hand, the defendant and DW.1 clearly admits the plaintiff was Khatha holder of the suit property on Ex.P.13/Sale deed. But the possession of the suit property in the hands of defendant/brother since long back. As such, no dispute of the plaintiff was owner of the suit property. Therefore, this court is of opinion that, the plaintiff/appellant has been owner of the suit property as per Ex.P.13/Sale deed.



21. It is specific contention of plaintiff and PW.1 that, the defendant illegally occupied the suit property by break open the back door of the house. On other hand, the defendant admits that, he constructed the house under Ashraya scheme and residing therein knowing fully to the plaintiff since several years. During the cross-examination of PW.1 categorically admits that, defendant residing in suit property and illegally got changed the Khatha of suit property before Panchayath. On other hand, DW.1 specifically deposed that, he constructed house in suit property after acquired under family during the lifetime of father. In support of contention DW.1 produced Ex.D.7/construction license clearly establish that, he constructed the house in the name of Muddamma none other than mother of plaintiff and defendant and residing their in suit property. DW.1 further deposed that, all the revenue documents i.e., Panchayath documents got transferred in his name.

22. It is important to note that, the plaintiff claiming the possession of suit property based on title. On other hand, the defendant/DW.1 directly admits the plaintiff was owner of the suit property as per Ex.P.13/Sale deed. The defendant and counsel contended that, they constructed the residential house under the Ashraya scheme and residing therein knowing fully to plaintiff. Admittedly, the plaintiff and defendant are full blood brothers and now the defendant along with wife and mother are residing in the suit property house. The question of



defendant illegally occupied the suit property by break open the back door of the house. However, the defendant and family members are residing in suit property house from the date of construction about 15 years ago. But the plaintiff filed the suit for recovery of possession based on Ex.P.13/Sale deed executed in the year of 1983. The said sale deed is way back of 27 years. As such, the suit of the plaintiff is barred by limitation. Admittedly, the plaintiff claiming the possession of suit property based on title. In this regard, it is necessary to read the article 65 of limitation act 1963:-

For possession of immovable property or any interest therein based on title.	Twelve years.	When the possession of the defendant becomes adverse to the plaintiff.
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By close reading of article 65 of the act clearly speaks that, the possession of immovable property from adverse party based on title shall be claim within 12 years from the date of possession becomes adverse. In the instant case, the plaintiff claiming the possession of suit property based on Ex.P.13/Sale deed nothing but title in the year of 1983. On other hand, PW.1 and DW.1 categorically admits that, the defendant and family members residing in constructed house in suit property since several years ago. But the plaintiff/PW.1 clearly admits the they are very much aware of defendant residing in the suit property since several years ago. As such, the plaintiff claiming the possession of suit property based on Ex.P.13/title after lapse of 15 years ago, but not filed suit within the period stipulated under article 65 of limitation act. The plaintiff and counsel never explained about delay in filling of suit for possession



based on Ex.P.13/Sale deed either trail court nor this court. On other hand, the defendant and counsel have rightly contended that, the suit of the plaintiff is barred by law of limitation. Therefore, the evidence of PW.2 & 3 and DW.2 will not helpful to the contention of both parties.

23. By reading of Judgment passed by the trail court, the learned trail court has rightly appreciated the defendant is in possession of suit property for more than 15 years ago and suit ought to have filed within 12 years for claiming the possession based on title. On other hand, the counsel for respondent has rightly argued that, the trail court has well appreciated the oral evidence of PW.1 with Ex.P.1 to 16 and contention of defendant in sound manner. Therefore, for all the above reasons, I hold that the judgment and decree passed by the trial court is accordance with law after appreciated the oral and documentary evidence of parties. Such being this court has no called for interference in judgment and decree passed by trail court. It is of the opinion court that, the appellant/plaintiff has not made out any grounds to set-aside the judgment and decree passed by trial court. Accordingly, **I answered to points No.1 in the Partly Affirmative and Partly Negative and Point No.2 & 4 in the Negative and Point No.3 in the Affirmative.**

24. POINT NO.5 : For foregoing reasons, I proceed to pass the following :



ORDER

The appeal filed by the appellant/plaintiff U/Sec. 96 R/w U/o XLI Rule 1 of C.P.C. is hereby Dismissed.

Consequently, the judgment and decree passed in O.S.No.122/2010 on dated 20.09.2017 by the Addl. Civil Judge and JMFC, Sira is hereby CONFIRMED.

Office is hereby directed to draw decree accordingly.

Office is further directed to return entire records of the original suit along with a copy of this judgment to the trial court forthwith.

(Dictated to Stenographer directly on computer, typed by him, corrected by me & then pronounced in open court on this the **13th day of July 2026**)

Sd/-
(VINOD KUMAR. M)
Addl. Senior Civil Judge &
JMFC., Sira