

KATK800008952019



Govt. of Karnataka

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

**IN THE COURT OF PRL.SENIOR CIVIL JUDGE AND
J.M.F.C., AT SIRA.**

Dated this the 13th day of July 2026

PRESENT

**Smt. ZARIFA BANU A.R.,
B.A.L., LL.M.,
PRL. SENIOR CIVIL JUDGE AND J.M.F.C.,
SIRA.**

ORIGINAL SUIT No. 85/2019

Plaintiffs: Ganesh,
S/o Hanumanthabhoi,
Aged about 62 years,
R/o Huildore Kaval,
Bukkapattana Hobli,
Sira Taluk,
Tumakuru District.
(Reptd. by Sri B.J.R., Adv.,)



- versus -

Defendants:

1. Kariyamma,
D/o Thimmabhovi,
Aged about 55 years.
2. Thimmaiah,
S/o late Arubella
Yallabhovi,
Aged about 60 years.
3. Shivamma,
W/o late Bheemaiah,
Aged about 60 years.
4. Yallamma,
D/o late Bheemaiah,
Aged about 42 years.
5. Radhamma,
D/o late Bheemaiah,
Aged about 40 years.
6. Susheelamma,
D/o late Bheemaiah,
Aged about 35 years.
7. Manjunatha,
S/o late Bheemaiah,
Aged about 28 years.



8. Puttamma,
D/o late Arubella
Yallabhovi,
Aged about 52 years.

Defendant No.1 to 8 are
R/o Huildore Kaval,
Bukkapattana Hobli,
Sira Taluk,
Tumakuru District.

**(D.1 by Sri.HWA., Adv., &
D.2 to 8 by Sri.Y.R.B., Adv.,)**

Date of Institution of the suit	:	17.06.2019		
Nature of the suit	:	Declaration and Permanent Injunction.		
Date of recording of Evidence	:	11.12.2019		
Date of Judgment Pronounced	:	13.07.2026		
Duration of the suit	:	<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>
		07	00	26

(ZARIFA BANU A.R.)
Prl. Senior Civil Judge and
J.M.F.C., Sira.



J U D G M E N T

This is a suit for declaration of title by virtue of Will dated 15.12.1987 and for permanent injunction against the defendants.

2. The brief case of the plaintiff is that:

The plaintiff is the absolute lawful owner in peaceful possession and enjoyment of the suit schedule properties. Originally the suit schedule properties are belongs to Arubella Thimmabhovi i.e. grand father of plaintiff. The revenue documents of the suit schedule properties were stands in the name of the grandfather of the plaintiff till his death. After his death, the plaintiff is the absolute owner in peaceful possession and enjoyment of the suit schedule properties. During the life time of the grandfather of the plaintiff, he had



executed the Regd. Will dated.15-12-1987 in favour of the plaintiff. The said Regd. Will dated.15-12-1987 which was registered before the Sub-Registrar, Sira in Book No.3, Volume No.17, in page No.111-112 in Registration No.75/1987-88. On the strength of the aforesaid Regd. Will, the revenue authorities were mutated the revenue documents in the name of plaintiff under IHR.No.1/1990-91. The said revenue documents were continued stands in the name of plaintiff. The grandfather of the plaintiff was no more. Under the above facts and circumstances, the plaintiff has been in peaceful possession and enjoyment of the suit schedule properties without any hindrance. The plaintiff has been paid up to date revenue tax to the Govt regularly. The defendants and their ancestors are not blood related to the plaintiff and plaintiff's ancestors. The plaintiff's



ancestors and defendant's ancestors are different families. But the plaintiff and defendants are the same caste i.e. Bhovi caste. The defendants have no manner of right, title, interest, much less possession over the suit schedule properties. Without lawful right and without lawful possession of the suit schedule property, the defendants have unnecessarily illegal interference with the plaintiff's peaceful possession and enjoyment of the suit schedule properties. The defendants have no right to do so. The plaintiff is the illiterate person. The plaintiff has never executed any type of encumbrance deeds in favour of the defendants. The defendants have colluded with the revenue authority for mutated the illegal revenue documents in their names. The defendants No.2 to 8 are the legal heirs Arubella Yallabhovi. Without lawful



order and without lawful documents, the revenue authorities were illegally mutated the revenue documents in the name of the defendants under M.R.No.4/1999-2000 and M.R.H5/2012-13 with respect of the suit schedule properties. When knowing the said facts, the plaintiff has challenged the said illegal orders before the competent revenue authority. Taking advantage of the revenue documents stands in the name of the defendants with respect of the suit schedule item No.1, the defendants have unnecessarily illegal interfere with the plaintiff's peaceful possession and enjoyment of the suit schedule Item No.1 and also the defendants have attempt to illegal dig and foundation of construct of the house, at that point of time, the plaintiff has questioned to defendants, but the defendants have gave evasive answer. Regarding the same, several panchayaths



were made at their locality, the defendants have not come and sit before the panchas for settle the matter and also the defendants have not mended their attitudes. Hence this suit.

3. In pursuance of suit summons, defendants appeared before the court through their respective counsels. The defendant No.1 and 2 have filed their separate written statements and other defendants not chosen filed their written statement.

4. It is the case of the defendant No.1 that, One Thimma bovi @ Arubella Thimmabovi, who is grandfather of plaintiff, has executed a registered will dated: 15.12.1987, bequeathing 7.11 acres of land in Sy No. 35/2, 0.13 guntas of and in Sy No. 36/7 and 0.13gutnas of land in Sy No. 36/9 in favour of plaintiff. After the



death of said Thimmabovi @Arubella Thimmabovi, WILL has come in to operation. Accordingly, revenue authorities have transferred Khatha of suit schedule properties i.e of Sy No. 35/2, measuring 7.11 acres (item No 1 of suit schedule properties) and of item No 2 and 3 of suit schedule properties in favour of plaintiff vide MR No 01/1990-91. Accordingly, revenue authorities have entered the name of plaintiff in RTC extract of these lands. The plaintiff, during the year 2000, offered to sell 1.00 acre of land in Sy. No 35/2, in favour of this defendant. This defendant after verifying all the revenue documents pertaining to Sy. No. 35/2, as a man of ordinary prudence does, agreed to purchase 1.00 acre of land in Sy. No. 35/2, from plaintiff. Accordingly, this defendant has purchased 1.00 acre of land in Sy No. 35/2, from plaintiff, under registered sale deed



dated.13.04.2000 for valuable consideration accompanied by delivery of possession. Thereafter, revenue authorities have transferred khatha of 1.00 acre of land in Sy No. 35/2, in favour of this defendant vide MR No.04/1999-2000, Since then this defendant is in peaceful possession and enjoyment of this land. Later 1.00 acre of land purchased by this defendant in Sy. No. 35/1 is phoded and renumbered as Sy. No. 35/15 measuring 1.00 acres, which is more fully described in written statement schedule. The plaintiff, who himself has sold 1.00 acre of land in favour of this defendant, which is part of item No.1 of suit schedule property is barred from seeking declaration of title over written statement schedule property. Hence, prays to dismiss the suit with exemplary costs.



5. It is the case of the defendant No.2
that, The original ancestor of parties to this suit is one Chikkayellabovi and he had son by name Arubella-Thimmabovi and the aforesaid Arubellathimmabovi had wife by name Kollamma and the said Arubella-thimmabovi and his wife Kollamma had three sons i.e. first son by name Arubella Thimmabovi, second son by name KuntaRamaiah and third son by name Arubella-Yellabovi and at present the above said all are died leaving behind their legal heirs. The above said first son of original ancestor Chikkayellabovi i.e. Arubella Thimmajja bovi alias Arubella Thimmajja had wife by name Thimmakka and the said Arubella Thimmabovi and Thimmakka had three sons i.e. first son by name Hanumanthaiah, second son by name Giddathimmaiah, and third son by name Ramakrishna and at present the above said all are dead except



his third son Ramakrishna. The first son of Arubella thimmajja is Hanumanthaiah alias Hanumanthabovi and he had wife by name Kariyamma. The above said Hanumanthaiah alias Hanuamanthabovi and his wife Kariyamma had three sons i.e. first son by name Ganesh le. plaintiff of this suit, second son by name Hanumanthalah and third son by name Ramabovi and at present plaintiff father Hanuamanthaiah is died and his above said brothers and others are alive. The second son of Arubellathimmajja is Giddathimmaiah and he had wife by name Lakshmakka and the said Giddathimmaiah and Lakshmakka had three sons i.e. first son by name Nagaraju, second son by name Krishna and third son by name Raghu and at present the above said Giddathimmaiah died leaving his above said wife and three sons as his legal heirs. The third son of Arubella Thimmajja alias Thimmabovi is Ramakrishna



and he is alive and residing at Ginnappanahatti Bukkapatna Hobli, Sira Taluk. The second son of Arubella Thimmabovi alias Thimmajja and Kollamma is KuntaRamaiah and he had wife by name Kariyamma and the said Kuntaramaiah and Kariyamma had sole son by name Thimmaiah and the said Kariyamms Thimmaiah had wife by name Kriyamma and at present the above said Thimmaiah and Kariyamma are dead leaving son by name Ramaiah and daughter by name Gangamma. The third son of Arubella Thimmabovi and Kollamma is Arubella Yellabovi and he had wife by name Sannamma and the said Arubellayella bovi and Sannamma had two sons first son by name Bheemaiah, second son by name. Thimmaiah and daughter by name Puttamma and the above said first son of Arubellayellabovi by name Bheemaiah had wife by name Shivamma and they had three daughters i.e. first



daughter by name Yellamma, second daughter by name Radha, third daughter by name Susheela and son by name Manjunatha and at present the above said Bheemaiah first son of Arubella Yella bovi is dead and his above said legal heirs are alive. During the life time of Arubella Yella bovi third son Arubella Thimmabovi and Kollamma (i.e. father of defendant No.2) on 2.5.2000 they had instituted O.S.No.130/2000 against all the legal heirs Arubella Thimmappa alias Thimajji first son Areublla Thimmabovi and Kollamma i.e. grand father of plaintiff and KuntaRamaiah second son of Arubella Thimmabovi and Kollamma in the court of Civil Judge (Jr.Dvn) and J.M.F.C at Sira seeking partition and separate possession of his 1/3rd share in suit schedule properties by holding that the alleged registered will dated: 15.12.1987 executed by plaintiff's grandfather Arubella



Thimmabovi alias Thimmajja in favor of plaintiff Ganesh in respect of suit schedule properties is not binding on his 1/3rd share and for costs and such other reliefs and the same was decreed on: 28.2.2005 granting 1/3rd share, in suit schedule properties. There after words F.D.P. NO.10/2006 was filed by father of second defendant on: 5.7.2006 and the preliminary decree was sent to Tahasildar Sira Taluk to effect partition and separate possession of his 1/3rd share and after receiving commissioner report from Tahasildar Final decree was drawn in favour of legal heirs of above said Arubella Yellabovi (since he died) i.e. in favour of his wife Sannamma (Now dead) Bheemaiah (now dead) i.e. husband of first defendant and father of defendants NO.4 to 7 and second defendant of this suit by the court of Civil Judge (Jr.Dvn) and J.M.F.C at Sira on



1.10.2012 on the basis of above said final decree passed in F.D.P. NO. 10/2006 the revenue authorities have made katha and pahani into the name of the legal heirs of Arubellayellabovi i.e. the defendants No.2 to 7 and they are in separate possession and enjoyment of the share allotted to Arubella Yellabovi by court as stated in above said court proceedings as stated supra by raising crops and by paying kadayam to revenue department. The plaintiff of this suit who was second defendant in O.S.No. 130/2000 and second respondent No.2 in FDP NO.10/2006 is well aware of all these facts has purposefully suppressed all the above said two proceedings had filed this suit with sole intention to harass and annoy defendants No.2 to 7 of this suit. The subject matter of this suit was directly and substantially in Issue in former suit bearing O.S.No.130/2000 and F.D.P NO:



10/2006 between the same parties under whom they are litigating under the same title and as such this suit is hit by section 11 of Civil Procedure code by Res-judicata, Hence on this grounds and such others prays to dismiss the suit on costs.

6. On the basis of the above pleadings, learned predecessor of this court framed Issues as follows:

I S S U E S

1. Whether the plaintiff proves that he is the owner and in possession of the suit properties?
2. Whether the defendant No.2 to 7 proves that, suit is hit by principles of Res-judicate?
3. Whether the plaintiff proves that, the defendants have interfered with his possession over the suit properties?



4. Whether the plaintiff is entitled for the relief of declaration of title and permanent injunction as prayed?

5. What Order or Decree?

Addl. Issue No.1

1. Whether the defendant No.1 proves that the plaintiff has sold an extent of one acre in Sy.No.35/2, which is now numbered as Sy.No.35/15 under sale deed dated:13.04.2000?

7. In order to substantiate their case, the plaintiff examined himself as P.w.1 and got marked documents at Ex.P.1 to P.6 and closed his side evidence. Ex.D-1 and 2 are marked on confronted to PW-1. On the other hand the defendant No.2 examined himself as DW-1 and got marked Ex.D.3 to 46 documents and defendant No.1 examined herself as Dw-2 and got marked Ex.D.47 to



62 documents and closed their side evidence.

8. Heard the arguments of both sides.
Perused entire material on record.

9. This court answers to the above issues are as follows;

ISSUE NO.1: In the Negative;

ISSUE NO.2: In the Affirmative;

ISSUE NO.3: In the Negative;

ISSUE NO.4: In the Negative;

Addl ISSUE NO.1: In the Negative;

**ISSUE No.5: As per final order
for the following:**

R E A S O N S

10. ISSUE No.1 to 4:- Since these issues involved common discussion, to avoid



repetition of fact taken up together for consideration.

11. In order to prove his case, the plaintiff examined himself as PW-1 and got produced Ex.P-1 to 6 documents. Ex.P-1 is the Will dated:15.12.1987, Ex.P-2 is the patta book, Ex.P-3 to 5 are the RTC extracts and Ex.P-6 is the mutation register extract. Ex.D.1 is the certified copy of plaint and Ex.D.2 is the registered sale deed dated:13.04.2000 which got marked through P.w.1 during his cross examination.

12. In order prove their case the defendant No.2 examined himself as DW-1 and got marked Ex.D-3 to D-46. Ex.D-3 is the certified copy of order sheet in O.S.41/2000, Ex.D-4 & 5 are the certified copies of judgment and decree in O.S.No.130/2000, Ex.D-6 is the certified



copy of chief examination affidavit in O.S.No.130/2000, Ex.D-7 is the certified copy of Encumbrance certificate, Ex.D-8 is the records of right document, Ex.D-9 is the index of land document, Ex.D-10 is the certified copy of Will dated:15.12.1987, Ex.D-11 is the certified copy of the mutation register extract, Ex.D-12 is the Certified copy of G.Tree, Ex.D-13 to 15 are the RTC extracts, Ex.D-16 to 35 are the certified copy of summons, Ex.D-36 is the certified copy of mutation, Ex. D-37 ro 44 are the RTC extracts, Ex.D-45 is the orer in FDP No.10/2006 and Ex.D-46 is the patta book.

13. Further the defendant No.1 examined herself as DW-2 and got marked Ex.D-47 to 62 documents. Ex.D-47 and 48 are the mutation register extracts, Ex.D-49 & 50 are the RTC extracts, Ex.D-51 to 61 are



the tax paid receipts and Ex.D-62 is the patta book.

14. On going through the aforesaid oral as well as documentary evidence, it is the specific case of the plaintiff that his grandfather by name Arubella Thimmabhovi had executed a registered Will dated 15.12.1987 in favour of the plaintiff and bequeath the suit schedule properties in favour of the plaintiff. After the death of his grandfather the khata in respect of suit schedule properties got mutated in the name of plaintiff by virtue of said Will and he has been in possession of the suit schedule properties and the defendants without having any right and title causing interference with the possession of the plaintiff. In order to substantiate his case, the plaintiff has produced original



registered Will dated 15.12.1987 as Ex.P-1 and Patta Book as Ex.P-2.

15. The crux of the case is that the said Will dated 15.12.1987 executed by Arubella Thimmabhovi in favour of the plaintiff with respect to suit schedule properties is undisputed. However the defendant No.2 specifically contended that on 2.5.2000 they had instituted a suit in O.S.No.130/2000 against all the legal heirs Arubella Thimmappa alias Thimajji first son Areublla Thimmabovi and Kollamma i.e. grandfather of plaintiff and KuntaRamaiah second son of Arubella Thimmabovi and Kollamma in file of Civil Judge (Jr.Dvn) and J.M.F.C at Sira seeking partition and separate possession of his 1/3rd share in suit schedule properties by holding that the alleged registered will dated: 15.12.1987 executed by plaintiff's



grandfather Arubella Thimmabovi alias Thimmajja in favor of plaintiff Ganesh in respect of suit schedule properties is not binding on his 1/3rd share and the same was decreed on: 28.2.2005 granting 1/3rd share, in suit schedule properties and declaring that the Will dated 15.012.1987 executed in favour of the plaintiff is null and void. There after a final decree proceeding held in F.D.P. NO.10/2006 filed by father of second defendant on: 5.7.2006 and the preliminary decree was sent to Tahasildar Sira Taluk to effect partition and separate possession of his 1/3rd share and after receiving commissioner report from Tahasildar Final decree was drawn on 1.10.2012 in favour of legal heirs of above said Arubella Yellabovi (since he died) i.e. in favour of his wife Sannamma (Now dead) Bheemaiah (now dead) i.e. husband of first defendant and father of



defendants NO.4 to 7 and second defendant of this suit. on the basis of above said final decree passed in F.D.P. NO. 10/2006 the revenue authorities have made katha and pahani into the name of the legal heirs of Arubellayellabovi i.e. the defendants No.2 to 7 and they are in separate possession and enjoyment of the share allotted to Arubella Yellabovi The plaintiff of this suit was the second defendant in O.S.No. 130/2000 and second respondent No.2 in FDP NO.10/2006 is well aware of all these facts has purposefully suppressed all the above said two proceedings had filed this suit with sole intention to harass the defendants No.2 to 7. Further taken a specific contention that the subject matter of this suit was directly and substantially in issue in former suit bearing O.S.No.130/2000 and F.D.P NO: 10/2006 between the same parties under whom they



are litigating under the same title and as such this suit is hit by section 11 of Civil Procedure code by Res-judicata.

16. In order to substantiate his case the defendant No.2 has produced certified copy of order sheet, judgment and decree passed in O.S.No.130/2000 which marked at the instances as Ex.D-3 to 5 and final decree proceeding in FDP No.10/2006 which marked at the instances as Ex.D-45. These two proceedings goes to show that One Arubella Yallabhovi filed suit for partition against defendants including the plaintiff and the defendant No.1 herein. The said suit came to be decreed and got declared that Arubella Yallabhovi (the plaintiff in previous suit) is entitled to 1/3rd share in the suit schedule properties and further declared that the alleged Will dated 15.12.1987 is not binding on the



share of Arubella Yallabhovi who is father of defendant No.2. Based on said preliminary decree Arubella Yallabhovi filed FDP No. 10/2006 which came to be decreed on 01.10.2012. Based on the said final decree khata and pahani got mutated in the name of their respective sharer including the plaintiff of this suit said two proceedings reached to its finality as there is no appeal lies against the judgment and decree passed in O.S.No.130/2000 and FDP No.10/2006. Which meticulously goes to show that the subject matter of this suit was directly and substantially in issue in the former suit bearing O.S.No.130/2000 and F.D.P No.10/2006 between the same parties under whom they are litigating under the same title and as such this suit is meticulously hit by principle of Res-judicata as per section 11 of civil procedure code.



17. It is further interesting to be noted here that though there is no pleading it was suggested to DW-1 during the course of his cross examination put forth by the plaintiff's counsel that DW-1 has not produced G.Tree in O.S.No.30/2000, he has not deposed about the Will dated 15.12.1987, he has not taken SPA from his father to prosecute the said suit, the summons send in that suit to the plaintiff/Ganesh was received by the plaintiff, he had filed FDP No.10/2006 and in that proceeding also the plaintiff had not received any summons from the court and the plaintiff had no knowledge of the aforesaid suit and FDP proceedings. The version of DW-1 reproduced here as it is,

"ಓ.ಎಸ್.130/2000 ದಾವೆಯನ್ನು ಸಲ್ಲಿಸುವ ಕಾಲಕ್ಕೆ ವಾದಿ ಗಣೇಶನ ತಾತ ತಿಮ್ಮಾಭೋವಿಯ ಮರಣ ಪ್ರಮಾಣ ಪತ್ರವನ್ನು ಪಡೆದುಕೊಂಡು ಹಾಜರುಪಡಿಸಿದ್ದಾನು. ವಿಲಿನ ವಿಚಾರವನ್ನು ಓ.ಎಸ್.130/2000



ದಾವೆಯಲ್ಲಿ ತಿಳಿಸಿದ್ದೇನೆ. ನಾನು ಓ.ಎಸ್.130/2000 ದಾವೆಯಲ್ಲಿ ಪಕ್ಷಗಾರನಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಾನು ಓ.ಎಸ್.130/2000 ದಾವೆಯನ್ನು ನಡೆಸಲು ನನ್ನ ತಂದೆಯಿಂದ ಜಿ.ಪಿ.ಎ. ಪಡೆದುಕೊಂಡಿದ್ದೀರಾ ಎಂದರೆ ಸಾಕ್ಷಿಯು ನನ್ನ ತಂದೆ ಜೀವಂತವಾದಿದ್ದಾಗಲೇ ನಾನು ಜಿ.ಪಿ.ಎ.ನ್ನು ಪಡೆದುಕೊಂಡೇ ನ್ಯಾಯಾಲಯದ ಒಳಗೆ ಹೋಗಿದ್ದೇನೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಓ.ಎಸ್.130/2000 ದಾವೆಯಲ್ಲಿ ಮರಣ ಪ್ರಮಾಣ ಪತ್ರ, ಆಧಾರ್ ಕಾರ್ಡ್ ಮತ್ತು ವಂಶವೃಕ್ಷ ಹಾಗೂ ಅದಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟ ಎಲ್ಲಾ ದಾಖಲಾತಿಗಳನ್ನು ಹಾಜರುಪಡಿಸಿದ್ದೆನು ಎಂದು ಸಾಕ್ಷಿ ನುಡಿಯುತ್ತಾರೆ. ಓ.ಎಸ್.130/2000 ರ ದಾವೆಯಲ್ಲಿ ಗ್ರಾಮಲೆಕ್ಕಾಧಿಕಾರಿಗಳಿಂದ ವಂಶವೃಕ್ಷವನ್ನು ಪಡೆದು ಹಾಜರುಪಡಿಸಿದ್ದೇವೆ. ಸದರಿ ದಾವೆಯಲ್ಲಿ ನಾನು ವಕೀಲರಿಂದ ವಂಶವೃಕ್ಷವನ್ನು ಬರೆಸಿ ಹಾಕಿದ್ದೇವೆ ಎಂದರೆ ಸರಿ. ಓ.ಎಸ್.130/2000 ರ ದಾವೆಯಲ್ಲಿ ವಾದಿ ಗಣೇಶ್ ರವರು ನ್ಯಾಯಾಲಯದಿಂದ ಸಮನ್ಸ್ ಪಡೆದಿಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿಯು ನಾವು ಕಳುಹಿಸಿದ್ದೆವು ಆದರೆ ಅವರು ಕೆಲಸಕ್ಕಾಗಿ ಹೊರಗಡೆ ವಲಸೆ ಹೋಗಿದ್ದರು ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಸದರಿ ನೋಟೀಸ್ ಗೆ ಅವರ ತಾಯಿ ಕರಿಯಮ್ಮ ಸಹಿ ಮಾಡಿ ತೆಗೆದುಕೊಂಡಿದ್ದರು. ನ್ಯಾಯಾಲಯದಿಂದ ಸಮನ್ಸ್ ಜಾರಿಯಾಗಿದೆ. ವಾದಿ ತಮ್ಮ ಹನುಮಂತಯ್ಯ ಎಂದರೆ ಸರಿ. ನಿ.ಪಿ.18 ರ ನೋಟೀಸ್‌ನ್ನು ಕರಿಯಮ್ಮ ಮತ್ತು ಗಣೇಶ್ ರವರ ಪರವಾಗಿ ಹನುಮಂತಯ್ಯನವರು ನೋಟೀಸ್ ಪಡೆದಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ. ಗಣೇಶ್ ರವರಿಗೆ ಓ.ಎಸ್.130/2000 ರ ದಾವೆಯ ಬಗ್ಗೆ ಖುದ್ದು ಮಾಹಿತಿ ಇಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಅವರಿಗೆ ಗೊತ್ತಿದ್ದರೂ ಗೊತ್ತಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಎಫ್.ಡಿ.ಪಿ. 10/2006 ಮತ್ತು ಓ.ಎಸ್.130/2000 ರ ಕೇಸುಗಳ



ಬಗ್ಗೆ ಗಣೇಶ್ ರವರಿಗೆ ಖುದ್ದು ಮಾಹಿತಿ ಇಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಅವರು ವಲಸೆ ಹೋಗಿದ್ದು, 2 ವರ್ಷಗಳಾದರೂ ಮನೆಗೆ ಬಂದಿರುವುದಿಲ್ಲ, ನಾನು ನನ್ನ ಕೈಲಾದ ಪ್ರಯತ್ನ ಮಾಡಿರುತ್ತೇನೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಓ.ಎಸ್.130/2000 ದಾವೆ ಹಾಕುವಾಗ ಪಹಣಿಯಲ್ಲಿ ಕರಿಯಮ್ಮನವರ ಹೆಸರು ಇತ್ತು ಎಂದರೆ ಸಾಕ್ಷಿಯು ನಾವು ಸಲ್ಲಿಸುವ ಕಾಲಕ್ಕೆ 6 ಎಕರೆ 11 ಗುಂಟೆ ಇತ್ತು ಎಂದರೆ ಸಾಕ್ಷಿಯು 7 ಎಕರೆ 11 ಗುಂಟೆ ಇತ್ತು ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಓ.ಎಸ್.130/2000 ದಾವೆಯು 28.05.2005 ರಲ್ಲಿ ತೀರ್ಮಾನವಾಗಿರುತ್ತದೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ತೀರ್ಮಾನವಾಗಿ ಅಂತಿಮ ಡಿಕ್ರಿಯಾಗಿ ನಾವು ಖಾತೆ ಪಹಣಿ ಮಾಡಿಸಿಕೊಂಡು ಬದಲಾವಣೆ ಮಾಡಿಕೊಂಡು ಹದ್ದು ಬಸ್ತು ಮಾಡಿಸಿಕೊಂಡು ಸ್ಟಾಫಿನದಲ್ಲಿ ಇದ್ದೇವೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ."

18. It is pertinent to note here that it is not at all the case of the plaintiff that the defendants got preliminary decree and final decree without the knowledge of the plaintiff and he has not received summons in the aforesaid proceedings. Without any pleadings the plaintiff brought new case during the course of cross examination of DW-1. Furthermore, the plaintiff except the alleged Will and Patta



book has not produced any RTCs and mutations to show that has been in possession and enjoyment of the suit schedule properties as on the date of the suit. Thus, in the absence of any pleadings the evidence put forth cannot accepted as true and correct. Thus, as aforesaid since the Will dated 15.12.1987 already declared as null and void in the previous suit based on which the plaintiff sought for declaration of title of ownership cannot be granted and as aforesaid the suit is hit by principle of res-judicata, the plaintiff is not entitled to the relief as sought in the plaint. **Thus, for all these reasons, the Issue No.1, 3 and 4 answered in the Negative and Issue No.2 answered in the affirmative.**

19. Addl Issue No.1:- The defendant No.1 has taken a specific contention that



the plaintiff had sold 1 acre of land in item No.1 Sy No.35/2 under registered sale deed dated 13.04.2000 by virtue of Will dated 15.12.1987. in order to substantiate her case the defendant No.1 has produced Sale deed/Ex.D-2. As aforesaid the very existence of Will dated 15.12.1987 alleged have been executed by Arubella Thimmabhovi in favour of the plaintiff is declared as null and void and not binding on the share of Arubella Yellabhovi in O.S.No.130/2000 and the said judgment and decree remained unchallenged, the execution of Sale deed in four of defendant No.1 having no sanctity as it was alienate without right and title. Furthermore, as aforesaid without any pleading it was suggested to DW-2 during her cross examination put forth by the plaintiff's counsel that the plaintiff had not executed any sale deed in favour of her, the signature found in the sale deed s



not the signature of the plaintiff and the she has created the sale deed to gulp off the plaintiff's property. The DW-2 reproduced here as it is, " ನಮಗೆ ಕ್ರಯ ಪತ್ರ ಬರೆದುಕೊಡುವ ಮೊದಲು 7 ಎಕರೆ 11 ಗುಂಟೆಯಲ್ಲಿ ಗಣೇಶ್ ರವರೇ ಸ್ವಾಧೀನದಲ್ಲಿದ್ದರು ಎಂದರೆ ಸರಿ. ವಾದಿಯು 1 ಎಕರೆಯನ್ನು ಅಳತೆ ಮಾಡಿಸಿ, ಚೆಕ್ಕುಬಂದಿಯನ್ನು ಹಾಕಿಸಿಕೊಟ್ಟಿರುತ್ತಾರೆ. ವಾದಿ ನಮಗೆ ಸಬ್ ರಿಜಿಸ್ಟ್ರಾರ್ ಕಚೇರಿಯಲ್ಲಿ ಕ್ರಯ ಪತ್ರ ಬರೆದುಕೊಟ್ಟಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಬೇರೆ ಯಾವುದೇ ವ್ಯಕ್ತಿಯನ್ನು ಕರೆದುಕೊಂಡು ಹೋಗಿ ಕ್ರಯಪತ್ರವನ್ನು ಸೃಷ್ಟಿಸಿ ಕೊಂಡಿರುತ್ತೇವೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಿ.ಡಿ.2 ರಲ್ಲಿರುವ ಸಹಿ ವಾದಿಯ ಸಹಿಯಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ರೆವಿನ್ಯೂ ಅಧಿಕಾರಿಗಳ ಜೊತೆ ಶಾಮೀಲಾಗಿ ಕ್ರಯ ಪತ್ರವನ್ನು ಸೃಷ್ಟಿಸಿಕೊಂಡಿರುತ್ತೇವೆ ಎಂದರೆ ಸರಿಯಲ್ಲ."

20. From the said suggestion goes to show that though the plaintiff had knowledge about the registered sale deed executed in favour of the defendant No.1, he has filed suit for declaration by including 1 acre alleged have been sold under registered sale deed dated 13.04.2000 and denied his signature over the sale deed



which was put before the sub registrar Sira. This is further ridiculous and absurd to suggest that there is no impediment to DW-2 to send the registered sale deed for expert opinion.

21. Thus, from the said observation it is meticulously goes to show that the plaintiff by suppressing all the said material facts, has filed this frivolous suit to abuse the process of law which clearly indicating that he has not approached the court with clean hand and the suit is liable to be dismissed on exemplary cost U/S 35A of CPC. **Thus, for all these reasons, the Addl. Issue No.1 answered in the Negative.**

22. ISSUE NO.5: For the aforesaid reasons, this court proceeds to pass the following:



ORDER

The Suit of the plaintiff is
hereby dismissed with exemplary
costs of Rs.10,000/-.

Draw decree accordingly.

(Dictated to the Stenographer directly on
computer, typed by her, corrected by me and then
pronounced in the Open Court on 13th day of July
2026).

(ZARIFA BANU A.R.)
Prl. Senior Civil Judge and
J.M.F.C., Sira.

ANNEXURE

List of witnesses examined for the plaintiff/s:

P.W.1 : Ganesh

List of documents got marked for the plaintiff/s:

Ex.P.1 : Certified copy of Will
dated:15.12.1987.

Ex.P.2 : Patta book.



Ex.P.3 to 5 : RTC extracts.

Ex.P.6 : Mutation register extract.

List of witnesses examined for the defendant/s:

DW-1 : Thimmaiah

DW-2 : Kariyamma

List of documents marked for the defendant/s:

Ex.D.1 : Certified copy of plaint.
(marked through PW-1)

Ex.D.2 : Registered sale deed
(marked through PW-1)

Ex.D.3 : Certified copy of order
sheet in O.S.No.41/2000.

Ex.D.4 & 5 : Certified copy of judgment
and decree in O.S.No.130/2000.

Ex.D.6 : Certified copy of chief
examination affidavit in
O.S.No.130/2000.

Ex.D.7 : Certified copy of encumbrance
Certificate.

Ex.D.8 : Records of right document.

Ex.D.9 : Index of land document.



Ex.D.10 : Certified copy of Will
Ex.D.11 : Certified copy of mutation
Ex.D.12 : Certified copy of G.Tree.
Ex.D.13 to 15: RTC extracts.
Ex.D.16 to 35: Certified copy of summons.
Ex.D.36 : Certified copy of mutation.
Ex.D.37 to 44: RTC extracts.
Ex.D.45 : Order in FDP No.10/2006.
Ex.D.46 : Patta book.
Ex.D.47 & 48: Mutation register extracts.
Ex.D.49 & 50: RTC extracts.
Ex.D.51 to 61: Tax paid receipts.
Ex.D.62 : Patta book.

**Prl. Senior Civil Judge and
J.M.F.C., Sira.**