

KAVN010012192019



**IN THE COURT OF THE ADDL. DISTRICT & SESSIONS
JUDGE, VIJAYANAGARA DISTRICT, HOSAPETE**

PRESENT: **SRI D. P. KUMARA SWAMY**

B.Com., LL.M.,
Addl. District & Sessions Judge,
Vijayanagara District, Hosapete

DATED THIS **07th** DAY OF **APRIL, 2026.**

REGULAR APPEAL No.5064/2019

Appellant : Pattanashetty Basavaraj,
S/o Pattanashetty Siddalingappa,
aged about 52 years,
R/o Kanchikere Village,
Harapanahalli Tq., Vijayanagara District.

(By Sri.K.Prabhakar Rao - Advocate)

V/s

Respondents: 1. Pattanashetty Siddalingappa,
S/o Revanasiddappa,
aged about 74 years,
R/o Kanchikere Village,
Harapanahalli Tq.,
Vijayanagara District.

2. Smt. Nagarathna
W/o Vamadeva K.G.
R/o M.B.Ayyanahalli,
Kudligi Tq., Vijayanagara District

3. Smt. Yankavva
W/o Vaddara Sanna Mallapp,
(dead No LRs)
4. Smt. Hanumavva
S/o Vaddara Sanna Mallappa,
(dead No LRs)
5. Anjinappa
S/o Vaddara Sanna Mallappa,
aged about 49 years,
6. Vaddra Bheemappa S/o Veerappa,
aged about 68 years
since dead by LRs
- 6(a) Hanumanthappa
S/o Late Vaddra Bheemappa,
aged about 49 years,
- 6(b) Devirappa
S/o late Vaddra Bheemappa,
aged about 45 years,
- 6(c) Chinnappa
S/o Late Vaddra Bheemappa,
aged about 45 years,
- 6(d) Narayanappa
S/o late Vaddra Bheemappa,
aged about 43 years,
7. Gangappa S/o Vaddra Kollappa,
aged about 44 years,

respondent Nos.3 to 7 are
R/o Kanchikere Village,
Harapanahalli Tq.,
Vijayanagara District.

**(By Sri.K.Chandrakanth - Advocate for R1 and R2
By Sri.B.Krishna Murthi - Advocate for R5, R6(a) to (d)
respondent Nos.3 and 4 – Dead)**

Date of Institution of Appeal : 06.07.2018

Total Duration : Year/s Month/s Day/s
- 07 - - 09- - 01-

**(D.P. KUMARA SWAMY),
ADDL. DISTRICT & SESSIONS JUDGE,
VIJAYANAGARA DISTRICT, HOSAPETE.**

JUDGMENT

This is a regular appeal under Order XLI Rule 1 of the Code of Civil Procedure, 1908, (for short, "**CPC**"), preferred by the plaintiff in the suit in OS No.1/2014 on the file of Senior Civil Judge and JMFC Court, Harapanahalli, (for short, "**the Trial Court**") to assail the judgment and decree passed by the Trial Court in OS

No.1/2014, DD on 08.06.2018, (for short, “**the impugned judgment**”).

2. The pleaded facts of the case of the plaintiff may be stated to the following effect:

2.1. The suit is one for the following relief :

2.1A. For partition of the suit properties.

2.1B. For declaration that the plaintiff and the defendant Nos.1 and 2 are the absolute owners in possession of the suit properties.

2.1C. Alternatively, for any reason whatsoever if the Courts comes to the conclusion that the plaintiff and the defendant Nos.1 and are not in possession of the suit properties, the decree for recovery of possession of Item Nos.1 and 2 of the suit property may be granted. And

2.1D. To grant such other and further relief in the fitness of facts and circumstances of the case on hand.

2.1E. To grant a decree of mandatory injunction for demolition of unauthorised structure put up in Item No.1 of the suit properties.

2.2. The suit properties are :

2.2A. 1 Acre 43 cents of land in Sy.No.186/A;

2.2B. 07 cents of land in Sy.No.197/B; and

2.2C. (i) 66 cents of land in Sy.No.444C2, (ii) 28 cents of land in Sy.No.444 C2AP2, (iii) 39 cents of land in Sy.No.444 C2AP1, (iv) 52 cents of land in Sy.No.445B, and (v) 11 cents of land;

- all the above noted properties are situated at Kanchikeri Village, Arasikere Hobli, Harapanahalli Tq., Davanagere Dist., (previsouly)/ Vijayanagara District (presently), which are fully described at Item Nos.1 to 3 (as per the group/s as indicated supra at paras 2.2A to 2.2C) in the schedule at the foot of the plaint.

2.3. The plaintiff is the son of the defendant No.1. The defendant No.2 is the daughter of the defendant No.1.

2.4. The defendant Nos.3 to 7 are no way related to the plaintiff and the defendant Nos.1 and 2. But, however, in view of earlier rounds of litigation between (i) the defendant No.1, (ii) the Ancestor of the defendant Nos.3 to 5, and (iii) the defendant Nos.6 and 7, the defendant Nos.3 to 7 are necessary parties to the present suit.

2.5. Item Nos.1 to 3 of the plaint schedule properties are the only joint family properties of the plaintiff and the defendant Nos.1 and 2.

2.6. Item Nos.1 and 2 of the plaint schedule properties were originally owned by one Sri.Ramappa S/o Myakala Hanumappa.

2.7. All the four of Item (viz., the plaintiff, the defendant Nos.1 and 2 and said Sri.Rmappa) have jointly executed a registered sale deed dated 03.2.1972 in favour of one Sri.Siddappa S/o Mali Siddaveerappa. The original of the said registered sale deed dated 03.02.1972 could not be traced. Hence, a certified copy of the said registered

sale deed dated 3.02.1972 is produced alongwith the
plaint.

2.8. Subsequently, one Sri.Mali Siddaveerappa (who is none other than the son of the purchaser under said registered sale deed dated 03.02.1972 by name Sri.Siddappa) has executed a registered sale deed on 03.01.1977 in favour of defendant No.1.

2.9. The name of the father as well as the name of the son of the said Sri.Mali Siddappa (purchaser under said registered sale deed dated 03.02.1972) happens to be "Siddaveerappa".

2.10. Based on the said sale deed dated 03.01.1977, the defendant No.1 got the mutation, ROR, Patta and such other revenue records changed to the name of the defendant No.1 as per orders in M 1/78-79. The said documents are standing in the name of the defendant No.1.

2.11. Till recently, the defendant No.1 is not interested in the welfare of the family on 2.10.2013, the plaintiff demanded for effecting partition in the suit properties and to allot the share of the plaintiff in the suit properties to the plaintiff. At that point of time, the defendant No.1 revealed to the plaintiff about the earlier round of litigation. The defendant No.1 directed the plaintiff to approach the Court of law for partition in the suit properties.

2.12. Thereafter, the plaintiff secured documents and found that the defendant No.1 fought the following litigation:

2.12A. OS No.13/1972 on the file of Munsiff Court, Harapanahalli.

2.12B. R.A. No.13/1974 on the file of Civil Judge Court, Bellary.

2.12C. OS No.56/1989 on the file of Munsiff Court, Harapanahalli.

2.12D. R.A. No.19/199 on the file of Civil Judge Court, Hosapete.

2.12E. R.S.A No.13/1995 before the Hon'ble High Court of Karnataka.

2.12F. As the defendant No.1 could not succeed in the first two cases (supra), he could not succeed in the last three cases (supra).

2.12G. While disposing off the RSA No.13/1995, the Hon'ble High Court of Karnataka, vide its judgment dated 17.8.1998, had given liberty to the defendant No.1 to establish his title independently and recover possession, by filing a separate suit. But, however, the defendant No.1 has not used the said liberty.

2.13. The defendant No.1 is negligent person. He has managed the family properties.

2.14. The said two suits were bare injunction suits.

2.15. The plaintiff and the defendant Nos.1 and 2 are in actual possession and enjoyment of the suit properties.

2.16. The defendants have no manner of right, title, or interest over the suit properties.

2.17. The above are the facts constituting cause of action for the suit. Hence, this suit.

2.18. By way of amendment, the plaintiff has pleaded to the effect that during pendency of this suit, the defendants have put up unauthorised construction over the Item No.1 of the suit properties.

3. The pleaded facts of the case of the defendant No.1 may, briefly, be stated to the following effect:

3.1. The defendant No.1 asserted to the following effect:

3.1A. The defendant No.1 has been in possession of Item Nos.1 and 2 of the suit properties. As

such, based on the liberty given by the Hon'ble High Court of Karnataka in RSA No.1513/1995, the defendant No.1 has not filed any suit on the basis of the registered sale deed dated 03.01.1977.

3.1B. The defendant Nos.3 to 7 are not in possession of Item Nos.2 and 3 of the suit properties.

3.1C. The decrees in OS No.103/1972 and in RA No.13/1974 did not go against the defendant No.1, after the execution of registered sale deed dated 03.01.1977.

3.2. With the above assertion, the defendant No.1 has admitted the facts of the case of the plaintiffs and consented for decreeing the suit as claimed in the plaint.

4. The pleaded facts of the defendant Nos.5 and 7 may, briefly, be stated to the following effect:

4.1. The relationship between the plaintiff and the defendant Nos.1 and 2 is not disputed.

4.2. One Sri.Pattanashetty Gangadharappa retained 40 cents of land in Item Nos.1 and 2 of the suit properties and sold the remaining portion of Item Nos.1 and 2 of the suit properties in favour of (i) Sri.Vaddara Sanna Mallappa S/o Kalappa, (ii) Sri.Vaddara Bheemappa S/o Veerappa, and (iii) Sri.Vaddra Kallappa S/o Gangappa – all residents of Kanchikeri village, Harapanahalli Tq., for sale consideration amount of Rs.90/- in the year 1950 or so.

4.3. Ever since then, the said three purchasers were in actual possession and enjoyment of the properties so purchased by them.

4.4. Hence, the plaintiff and the defendant No.1 are the owners of the entire extent of Item Nos.1 and 2 of the suit properties.

4.5. The defendant No.3 is the wife and the defendant Nos.4 and 5 are children of said Sri.Vaddara Sanna Mallappa.

4.6. The defendant No.7 is the son of said Sri.Vaddara Kallappa.

4.7. The defendant Nos.1 and 6, Sri.Vaddara Sannamallappa, and Sri.Vaddara Kallappa had filed a suit in OS No.103/1972 claiming joint ownership over Item Nos.1 and 2 of the suit properties. The said suit was filed against one Sri. Mali Siddappa.

4.8. The suit in OS No.103/1972 came to be decreed in favour of the plaintiffs therein.

4.9. The defendant in OS No.103/1972 by name Sri.Mali Siddappa had preferred an appeal in RA No.13/1974 before the Civil Judge Court, Ballari, to assail the judgment and decree in OS No.103/1972.

4.10. The appeal in RA No.13/1974 came to be dismissed.

4.11. The defendant No.1 had filed a suit against Sri.Vaddara Sanna Mallappa, Sri.Vaddara Bheemappa, and Sri.Vaddara Kallappa, seeking for a

decree for perpetual prohibitory injunction in respect of the suit properties of the said suit, based on a registered sale deed dated 03.01.1977. In the said suit, the defendants therein had denied the contention of the plaintiff therein; asserted facts regarding the litigation in OS No.103/1972; and also asserted that the vendor under registered sale deed dated 3.1.1977 did not have marketable title over the suit properties of the said suit as his father (Sri.Mali Siddappa) had lost the litigation in OS No.103/1972 in respect of the very same properties.

4.12. In Sy.No.186/A, the defendant No.1 is in possession of 40 cents of land, the defendant No.5 is in possession of 34.5 cents of land, LRs of the defendant No.6 are in possession of 34.5 cents of land, and the defendant No.7 is in possession of 34 cents of land.

4.13. There is a residential farm house in the said land of defendant No.7.

4.14. There is a latrine room in the said land of defendant No.5.

4.15. The defendant Nos.5 and 7 are in possession of their respective lands (as detailed supra) since the time of their ancestors to the knowledge of the vendor under registered sale deed dated 3.1.1977 hostile to his rights and interests for more than 22 years immediately prior to the filing of the suit in OS No.103/1972 and perfected their title over their respective lands (as detailed supra).

4.16. The suit is time barred.

4.17. The plaintiff has no right to file the suit for partition as the defendant No.1 himself has no title over the Item Nos.1 and 2 of the suit properties.

4.18. Item Nos.1 and 2 of the suit properties are not the joint family properties of the plaintiff and defendant Nos.1 and 2.

4.19. Suit is hit by doctrine of resjudicata.

4.20. Doctrine of estoppel applies against the plaintiff and the defendant Nos.1 and 2 from raising pleas contrary to the pleadings in OS No.103/1972.

4.21. Suit is bad for non joinder of necessary parties.

4.22. The suit is bad for not including all the joint family properties of the plaintiff and the defendant Nos.1 and 2 as suit properties.

4.23. The suit is hit by the provisions contained in Order 2 Rule 2 CPC.

4.24. The subject matter of the suit is under valued. The Court fee paid is insufficient.

4.25. With the above assertions, the defendant No.5 and 7 have categorically denied the pleaded facts of the plaint. Suit may be dismissed.

5. The defendant Nos.5, 6(a) to 6(d) and 7 have filed their Additional written statement, wherein they have

categorically denied the contention of the plaintiff that the defendants have unauthorizedly put up a house in Item No.1 of the suit properties during the pendency of this suit.

5.1. The defendant Nos.5, 6(a) to 6(d) and 7 have contended that the said house is in existence since very long time prior to filing of this suit.

5.2. The relief of mandatory injunction claimed by the plaintiff for removal of the said house from Item No.1 of the suit property is barred by limitation.

5.3. The suit may be dismissed with costs and exemplary costs.

6. After completion of pleadings, based on the materials on record, the Trial Court has framed the following issues:

1. Whether the plaintiff proves that the suit schedule properties are the ancestral and

joint family properties of plaintiff and defendants ?

2. Whether the plaintiff proves that he is entitled for 1/3rd share in the suit schedule property ?

3. Whether the plaintiff proves that the plaintiff, defendant No.1 and 2 are the owner of the suit schedule property ?

4. Whether the plaintiff proves that during the pendency of the case the defendants have unauthorisedly put up a house in the Item No.1 of the suit schedule property ?

5. Whether the plaintiff proves that the defendants are causing interference to his peaceful possession and enjoyment over the suit schedule property ?

6. Whether the plaintiff proves that he is entitled for alternative relief of possession ? If the courts comes tot he conclusion that the plaintiff, defendant Nos.1 and 2 are not in possession of the suit schedule Item Nos.1 and 2 ?

7. Whether the defendant Nos.5 and 7 proves that the Court fee and suit valuation paid is not proper ?

8. Whether the defendant proves that the suit of the plaintiff is barred by law of limitation ?

9. Whether the defendant Nos.5 and 7 proves that they are in possession of land bearing Sy.No.186/A with the knowledge of the vendor of the defendant No.1 hostile to its rights and interest for more than 22 years as such he acquired the said property by way of law of adverse possession ?

10. Whether the defendant Nos.5 and 7 prove that the suit of the plaintiff is hit by the principles of law of res-judicata ?

11. Whether the defendant proves that suit of the plaintiff is suffering from non joinder of necessary parties ?

12. Whether the defendant Nos.5 and 7 prove that the suit is bad for partial partition ?

13. Whether the defendant proves that suit is hit by order 2 Rule 2 ?

14. Whether the defendant Nos.5 and 7 prove that the Court fee and suit valuation paid by the plaintiff is not proper ?

15. Whether plaintiff is entitled the relief as sought in the suit ?

16. What order or decree ?

7. On behalf of the plaintiff, plaintiff got himself examined as PW1 and got marked Ex.P1 to Ex.P45. Defendant No.5 got himself examined as DW1; got examined one witness as DW2; and got marked Ex.D1 to Ex.D20.

8. The Trial Court has returned findings - (I) on the issue Nos.1 to 8, 11, 13 to 15 in the negative; and (ii) on the issue Nos.9, 10, and 12 in the affirmative. Ultimately, the Trial Court dismissed the suit with costs, vide the impugned judgment.

9. Secured TCR.

10. Heard arguments of learned Advocates appearing for the parties.

11. Perused the records.

12. In the facts and circumstances of the case on hand, the following points do arise for consideration of this Court.

1. Whether the plaintiff has proved that the suit properties are the ancestral and joint family properties of the plaintiff and the defendant Nos.1 and 2 ?

2. Whether the plaintiff has proved that the plaintiff and the defendant Nos.1 and 2 are in joint possession and enjoyment of the suit properties ?

3. Whether the plaintiff has proved that the defendant Nos.3 to 5, 6(a) to 6(d), and 7 are interfering with the possession and enjoyment of the suit properties in the hands of the plaintiff and the defendant Nos.1 and 2 ?

4. Whether the plaintiff has proved that the defendant Nos.3 to 5, 6(a) to 6(d), and 7 have put up a house in Item No.1 of the suit properties ?

5. Whether the plaintiff has proved that the plaintiff is entitled to alternative relief of recovery of possession of Item No.1 and 2 of the suit properties ?

6. Whether the subject matter of the suit is under valued and Court fee paid is insufficient ?

7. Whether the suit is Item barred ?

8. Whether the suit is barred by res-judicata ?

9. Whether the suit is bad for non joinder of necessary parties ?

10. Whether the suit is one for partial partition and, as such, the suit is not sustainable ?

11. Whether the suit is barred under Order II Rule 2 of CPC ?

12. Whether the plaintiff is entitled for the relief of partition and separate possession ?

13. Whether the plaintiff is entitled for the relief of declaration that the plaintiff and the defendant Nos.1 and 2 are joint owners in possession of the suit properties ?

14. Whether the plaintiff is entitled for the relief of mandatory injunction ?

15. Whether the plaintiff is entitled for the relief of recovery of possession of the suit properties ?

16. Whether the impugned judgment calls for interference ?

17. What decree or order ?

13. The points for consideration are answered thus:

Point No.1 : in the negative

Point No.2 : in the negative

Point No.3 : in the negative

Point No.4 : in the negative

Point No.5 : in the negative

Point No.6 : in the negative

Point No.7 : in the affirmative

Point No.8 : in the negative

Point No.9 : in the affirmative

Point No.10 : in the affirmative

Point No.11 : in the negative

Point No.12 : in the negative

Point No.13 : in the negative

Point No.14 : in the negative

Point No.15 : in the negative

Point No.16 : in the negative

Point No.17 : as per final order of the following:

REASONS

14. Point No.1: During the course of cross-examination, the PW1 (the plaintiff) has deposed to the following effect:

14.1. The defendant No.1 is having three brothers (including the defendant No.1). The defendant No.1 is having four sisters. No partition of the joint family properties took place between the defendant No.1, his brothers and his sisters.

14.2. It is true that in Sy.No.186/A1 of Kanchikere village, 1 acre 43 cents of land is there. It is not true to suggest that in said Sy.No.186/A1, - (i) 40 cents of land belongs to the defendant No.1; (ii) 34.50 cents of land belongs to one Sri.Erappa S/o Bhimappa; (iii) 34.50 cents of land belongs to one Sri.Anjinappa S/o Mallappa; and (iv) 34 cents of land belongs to one

Sri.Kollappa S/o Gangappa. It is not true to suggest that vide MR No.34/2013-14, the said 1 acre 43 cents of land is entered in the joint names of said four persons. The plaintiff has not challenged the said MR No.34/2013-14. But, however, during further cross-examination, the PW1 has admitted the said facts. Mutation register extract of MR No.34/213-14 is marked through PW1 as Ex.D10.

14.3. In cross-examination dated 06.06.2016, the PW1 has expressed his ignorance about the fact that 37 cents of land in Sy.No.310A of Kanchikere village stands in the name of the defendant No.1. But, however, in cross-examination dated 21.09.2016, the PW1 has admitted the said fact. The ROR of said 37 guntas of land in Sy.No.310A of Kanchikere village for the year 2015-16 is marked through PW1 as Ex.D1.

14.4. It is true that 6 cents of land in Sy.No.345A of Kanchikere village is standing in the name

of mother of PW1. The ROR of the said 6 cents of land for the year 2015-16 is marked through PW1 as Ex.D2.

14.5. It is true that 1 acre 24 cents of land in Sy.No.346B of Kanchikere village is standing in the name of mother of PW1. The ROR of the said 1 acre 24 cents of land for the year 2015-16 is marked through PW1 as Ex.D3.

14.6. It is true that 1 acre 47 cents of land in Sy.No.147B and 347 of Kanchikere village. The ROR of Sy.No.347/B of Kanchikere village for the year 2015-16 is marked through PW1 as Ex.D4. Ex.D4 shows that the extent of land is 1 acre 92 cents. It is standing in the name of mother of defendant No.1.

14.7. It is true that 5 acres 9 cents of land in Sy.No.344B of Kanchikere village is standing in the name of mother of PW1. The ROR of the said 5 acres 9 cents of land for the year 2015-16 is marked through PW1 as Ex.D5.

14.8. It is true that 40 cents of land in Sy.No.445 A/P2 of Kanchikere village is standing in the name of mother of PW1. The ROR of the said 40 cents of land for the year 2015-16 is marked through PW1 as Ex.D6.

14.9. It is true that 8 acres 75 cents of land in Sy.No.16 of Kanchikere village is standing in the name of mother of PW1. The ROR of the said 8 acres 75 cents of land for the year 2015-16 is marked through PW1 as Ex.D7.

14.10. It is true that 55 cents of land in Sy.No.445/B is standing in the name of the defendant No.1. ROR of said 55 cents of land for the year 2015-16 is marked through PW1 as Ex.D8.

14.11. It is true that in the ROR of 1 acre 48 cents of land in Sy.No.215/B4 of Kanchikere village, for the year 2015-16, the name of the defendant No.1 and

Medical Office Primary Centre Karnataka are entered. The said ROR is marked through PW1 as Ex.D9.

14.12. It is true that in the land in Sy.No.186A of Kanchikere village, which is in possession of the defendant No.7, a farm house is constructed.

14.13. It is true that in the land in Sy.No.186A of Kanchikere village, which is in possession of the defendant No.5, a rest room (latrine room) is constructed.

14.14. The PW1 does not know if Sri.Bhimappa S/o Veerappa is in possession of 34.5 cents of land in Sy.No.186A of Kanchikere Village since 22 years prior to filing of the suit in OS No.103/1972 and perfected his title over the said land by way of adverse possession.

14.15. The PW1 does not know if Sri.Anjinappa S/o Mallappa is in possession of 34.5 cents of land in Sy.No.186A of Kanchikere Village since 22 years prior to filing of the suit in OS No.103/1972 and perfected his title over the said land by way of adverse possession.

14.16. The PW1 does not know if Sri.Kollappa S/o Gangappa is in possession of 34.5 cents of land in Sy.No.186A of Kanchikere Village since 22 years prior to filing of the suit in OS No.103/1972 and perfected his title over the said land by way of adverse possession.

14.17. Subsequently, PW1 has admitted that the said 3 persons have perfected their title over their respective lands.

14.18. The PW1 would not agree with the suggestion that the right claimed by the plaintiff in respect of said land was directly and substantially involved in the suits in OS No.103/1972 and in OS No.56/1989.

14.19. It is not true to suggest that the plaintiff cannot raise the contentions contrary to the contentions of the defendant in earlier suits and by twisting the facts.

14.20. It is not true to suggest that the suit is bad for non – joinder of mother of the PW1 as a necessary party to the suit.

14.21. It is not true to suggest that since the plaintiff has not included all the properties of the family, the suit is one for partial partition and as such the suit is not maintainable.

15. The plaintiff has produced a certified copy of a registered sale deed dated 03.2.1972 to show that one Sri.Siddappa S/o Mali Siddaveerappa purchased Item Nos.1 and 2 of suit properties; and got the same marked as Ex.P1.

16. The plaintiff has produced a certified copy of a registered sale deed dated 03.01.1977 to show that defendant No.1 purchased Item Nos.1 and 2 of suit properties; and got the same marked as Ex.P2.

17. The plaintiff has produced a certified copy of mutation register concerning MR No.1/1978-79 and got it marked as Ex.P3. Ex.P3 is produced in support of Ex.P1.

18. The plaintiff has produced encumbrance certificate in respect of Item Nos.1 and 2 of the suit properties for the period from 01.04.1984 to 17.10.2013 and got it marked as Ex.P4.

19. Ex.P7 is a certified copy of the judgment of Munsiff and JMFC Court in OS No.56/1989 in the matter of Pattanashetty Siddalingappa V/s Vadra Sanna Mallappa and 2 others, DD on 12.11.1990. Ex.P8 is a certified copy of the decree in said OS No.56/1989. Ex.P10 is a certified copy of the judgment of Civil Judge Court, Hosapete, in RA No.109/1990 in the matter of P.Siddalingappa V/s Yankavva and 4 others, DD on 08.08.1995. Ex.P11 is a certified copy of the decree in said RA No.109/1990. Ex.P12 is a certified copy of the judgment of the Hon'ble High Court of Karnataka in RSA No.1513/1995 in the matter of P.Siddalingappa V/s Vaddara Sanna Mallappa, deceased by LRs and 2 others DD on 17.08.1998.

20. A perusal of Ex.P7 and Ex.P8 certified copies of judgment and decree in said OS No.56/1989 would show that the present defendant No.1 filed the said suit in respect of present Item Nos.1 and 2 of the suit properties for the relief of perpetual prohibitory injunction.

20.1. In OS No.56/1989, the Court had framed the following issues:

1. Whether plaintiff proves that he is in lawful possession of the suit property as on the date of suit ?
2. Whether cause of action arose to file this suit ?
3. Whether suit is not maintainable ?
4. Whether suit is hit by the principle of resjudicata ?
5. Whether suit is bad for non joinder of necessary party ?
6. Whether suit is bad by limitation ?
7. Whether Court fee paid is insufficient ?

8. Whether plaintiff is entitled for the reliefs sought for ?

9. Whether defendants are entitled for the compensatory costs.

10. What order or decree ?

20.2. In OS No.56/1989, the Court had held issue Nos.1, 5 to 9 in the negative; and issue Nos.2 to 4 in the affirmative. Ultimately, the Court dismissed the suit in OS No.56/1989.

21. A perusal of Ex.P10 – judgment of the First Appellate Court in RA No.109/1990 would show that the judgment and decree as per Ex.P7 and Ex.P8 is affirmed.

22. A perusal of Ex.P12 – judgment of Hon'ble High Court of Karnataka in RSA No.1513/1995 would show that the judgment and decrees as per Ex.P7, Ex.P8, Ex.P11 and Ex.P12 are affirmed by the Hon'ble High Court of Karnataka. The Hon'ble High Court of Karnataka has made the following observations while disposing off RSA

No.1513/1995 “However, liberty is given to the plaintiff to establish his title independently and the suit for separate possession”.

23. There is nothing on record to indicate that the defendant No.1 has filed any independent suit in respect of Item Nos.1 and 2 of the suit properties against the defendants of the suit in OS No.56/1989 or against the persons claiming through the said defendants seeking for the relief of declaration of his title over Item Nos.1 and 2 of the suit properties based on Ex.P2 sale deed dated 03.01.1977 and for consequential relief of recovery of possession of Item Nos.1 and 2 of the suit properties, so far.

24. One of the relief claimed in this suit is to declare that the plaintiff and the defendant Nos.1 and 2 are the joint owners of Item Nos.1 and 2 of the suit properties.

25. Ex.P7 – judgment of Munsiff Court, Harapanahalli, shows that the said Court had noted that in OS No.103/1972, the Court had held to the effect that the plaintiffs in OS No.103/1972 (i.e., the plaintiff and the defendants in OS No.56/1989) are found to be in possession of their respective lands. It is also observed in Ex.P7 that under the sale deed (which was marked as Ex.P7 in OS No.56/1989), the present defendant No.1 has sold his 40 cents of land in Sy.No.186A of Kanchikere in favour of Smt. Hanumavva.

26. The present defendant No.7 is claiming through defendant No.3 in OS No.56/1989. The present defendant No.6(a) to 6(c) are claiming through the defendant No.2 in OS No.56/1989. The present defendant Nos.3 to 5 are claiming through the defendant No.1 in OS No.56/1989.

27. Though the suits in OS No.56/1989 and 103/1972 were bare injunction suits, as the plaintiffs in OS No.103/1972 had questioned the title of the father of

the vendor the present defendant No.1 (in respect of Item Nos.1 and 2 of the present suit properties); and also as the defendants in OS No.56/1989 had questioned the title of the plaintiff in OS No.56/1989 (i.e., the present defendant No.1) in respect of Item No.1 and 2 of the present suit properties, question of title of the defendant in OS No.103/1972 (i.e., the father of the vendor of the present defendant No.1 under Ex.P2 sale deed dated 03.01.1977) was directly and substantially in question in the said two previous suits. Moreover, the Trial Court in OS No.56/1989 has held that the said suit in OS No.56/1989 was barred by doctrine of Resjudicata. The said finding has attained finality in view of judgment of the Hon'ble High Court of Karnataka in RSA No.1513/1995 as per Ex.P12.

28. The Trial Court has taken into consideration the very contention of the present defendant No.1 in the plaint in OS No.103/1972 (as the present defendant No.1

was one amongst the four plaintiffs in OS No.103/1972) to the effect that the plaintiffs in OS No.103/1972 were in possession of their respective lands in Item Nos.1 and 2 of the present suit properties. The Trial Court has also taken into consideration the contention of the defendants in OS No.56/1989. The Trial Court has taken into consideration, the effect of judgments in previous suits and all other plethora of materials on record of TCR and rightly come to the conclusion that the defendant Nos.5 and 7 have proved their plea of adverse possession.

29. From the above discussion, following conclusions are reached:

29.1. The plaintiff has failed to prove that Item Nos.1 and 2 of the suit properties are ancestral and joint family properties of the plaintiff and the defendant Nos.1 and 2. Hence, Point No.1 is held in the negative.

29.2. The plaintiff has failed to prove that the plaintiff and the defendant Nos.1 and 2 are in possession

of Item Nos.1 and 2 of the properties. Hence, question of interference does not arise. Moreover, the plaintiff himself is in doubt as to whether or not the plaintiff and the defendant Nos.1 and 2 are in possession of the Item Nos.1 and 2 of the suit properties. Hence, Point No.2 is held in the negative.

29.3. The plaintiff has failed to prove that the Item Nos.1 and 2 of the suit properties are the ancestral and joint family properties of the plaintiff and the defendant Nos.1 and 2; and the plaintiff and the defendant Nos.1 and 2 are in possession of the said properties. Consequently, the plaintiff has failed to prove the alleged interference. Hence, point No.3 is held in the negative.

29.4. In view of findings on point Nos.1 and 3 and also for want of positive evidence, it is held that the plaintiff has failed to prove that the defendants have

unauthorizedly put up construction over Item No.1 of the suit properties. Hence, Point No.4 is held in the negative.

29.5. The plaintiff has failed to prove as to how the plaintiff is entitled to recover possession of the Item Nos.1 and 2 of the suit properties. Hence, Point No.5 is held in the negative.

29.6. In 2007(2) KLJ 311 (SC) Jagannath Amin V/s Seetharama (Dead) by LRs and others, the Hon'ble Supreme Court has ruled that where the plaintiff claims that he is a co-owner, he is presumed to be in constructive possession of the suit properties and, as such, Court fee is payable on deemed marked value under Section 35(2) of Karnataka Court Fees and Suits Valuation Act, 1958. In view of the pleadings in the plaint, Court fee paid is held to be sufficient. Hence, Point No.6 is held in the negative.

29.7. When it is considered that as the defendant No.1 has admitted at an undisputed point of time (i.e., when there was no dispute between the

plaintiffs of the suit in OS No.103/1972 concerning Item Nos.1 and 2 of the suit properties) that, the defendant of the suit in OS No.103/1972 (who happens to be father of the person from whom the defendant No.1 purchased the Item Nos.1 and 2 of the suit properties) was not the owner of the Item Nos.1 and 2 of the suit properties; and also admitted that the erstwhile owner of the said properties has sold the said properties in various bits to the plaintiffs of the suit in OS No.103/1972 in 1950 for a sum of Rs.90. Since 1989, the defendants of the suit in OS No.56/1989 and their legal heirs have been disputing the title of the present defendant No.1. In RSA No.1513/1995, the Hon'ble High Court of Karnataka, in its judgment as per Ex.P12, has given liberty to the present defendant No.1 to file suit for declaration of his title over Item Nos.1 and 2 of the suit properties on 17.08.1998. But, so far, the defendant No.1 has failed to file any such suit. Under above noted circumstances, the suit of the plaintiff is

barred by time under Articles 58, 64 and 65 of Limitation Act, 1963. Hence, Point No.7 is held in the affirmative.

29.8. In Ex.P7 – judgment in OS No.56/1989, the Trial Court therein had concluded that the said suit was barred by res-judicata. The discussion supra indicates that the present suit in respect of Item No.1 and 2 of the suit properties is barred by resjudicata. Hence, Point No.8 is held in the affirmative.

29.9. The suit is bad for non-joinder of the mother of the plaintiff. Hence, the suit is bad for non-joinder of necessary parties. Hence, point No.9 is held in the affirmative.

29.10. The suit is bad for non inclusion of properties covered under Ex.D8 and Ex.D9. Hence, Point No.10 is held in the affirmative.

29.11. The suit is not barred under Order II Rule 2 CPC. Hence, point No.11 is held in the negative.

29.12. The plaintiff is not entitled for any of the relief. Hence, point Nos.12 to 15 are held in the negative.

29.13. The impugned judgment does not call for interference. Hence, point No.16 is held in the negative.

30. Point No.17: Hence, the following

ORDER

1. The appeal is dismissed with costs through out.

2. The impugned judgment and decree in OS No.1/2014, DD on 08.06.2018 passed by Senior Civil Judge and JMFC Court, Harapanahalli is affirmed.

3. Draw decree accordingly.

4. Return back TCR alongwith a copy of this judgment to the Trial Court.

(Dictated to the stenographer, typed by him, corrected and signed by me and then pronounced in the open Court on this **7th** day of **April, 2026**).

**(D. P. KUMARA SWAMY),
ADDL. DISTRICT & SESSIONS JUDGE
VIJAYANAGARA DISTRICT, HOSAPETE.**

(Judgment pronounced in the open Court
Vide separate order)

ORDER

1. The appeal is dismissed with costs through out.
2. The impugned judgment and decree in OS No.1/2014, DD on 08.06.2018 passed by Senior Civil Judge and JMFC Court, Harapanahalli is affirmed.
3. Draw decree accordingly.
4. Return back TCR alongwith a copy of this judgment to the Trial Court.

**(D. P. KUMARA SWAMY),
ADDL. DISTRICT & SESSIONS JUDGE
VIJAYANAGARA DISTRICT, HOSAPETE.**