

KAVN210015022015



IN THE COURT OF CIVIL JUDGE & JMFC, AT KUDLIGI

**Present: Smt.C.Mahalakshmi,
B.A.L., LL.M.,
Civil Judge & JMFC.,
O.S. No.174/2015**

Dated this the 27th day of March 2026

Plaintiff Smt. Lakshmi Bai W/o Devla Naik, aged about 55 years, R/o Mothikal thanda village, Kudligi taluk, Ballari.

(By Sri.K.J.G Adv.)

// Vs //

Defendant Chandrashekarappa,S/oG.Shanthappa, aged about 80 years, R/o K.Kodihalli, H.B halli taluk, Ballari District.

(By Sri.D.L.R Adv.)

Counter Claimant Chandrashekarappa,S/oG.Shanthappa, aged about 80 years, R/o K.Kodihalli, H.B halli taluk, Ballari District dead by his LR's

1(a). Jagadeesh.G S/o Chandrashekharappa, aged about 53 years,

1(b). Sunanda @ Pushapa W/o
Yuvaraja Patel, D/o
Chandrashekharappa, aged
about 51 years,

1(c). G.Nagaraja, S/o
Chandrashekarappa, aged
about 49 years,

1(d). Neelambika.G W/o
Chandrashekar.S Patil, D/o
Chandrashekhrappa, aged
about 47 years,

1(e). G.Shantha Kumar, S/o
Chandrashekharappa, aged
about 45 years,

1(f).B.K.Sarswathi,W/oMallikar
juna,D/oChandrashekharappa
aged about 43 years,

1(g). Suresh G S/o
Chandrashekharappa, aged
about 47 years,

All are resident of K.Kodihalli
village, Kottur taluk,
Vijayanagara District.

(By Sri.D.L.R Adv.)

Vs

Respondent

Lambani Rathna Naik, S/o
Lambani Chandra Naik, aged
about 60 years, R/o Mothikalu
thanda, Dupadahalli post,

Kudligi taluk, Ballari District.

(By Sri.K.J.G Adv.)

Date of Institution of suit	16.10.2015
Nature of the suit	<u>Permanent injunction</u>
Nature of the counterclaim	<u>Declaration</u>
Date of commencement of recording of evidence	15.06.2023
Date of Judgment	27.03.2026
Total Duration	Year/s Month/s Day/s 10 05 11

: JUDGMENT :

01. This is a suit for Permanent Injunction instituted by the plaintiff against the defendant with respect to land bearing Sy.no.233/4A measuring 0.65 acres and Sy.no.239/1 measuring 2.31acres. The defendant has sought for declaration with respect to suit schedule properties.

02. The brief facts of the plaintiff's case is that the plaintiff is the relative of Hamya Naik. The plaintiff has entered into the family arrangements between herself and

Hamya Naik. The suit schedule properties are cultivated separately by the plaintiff. The suit schedule properties are in peaceful possession and enjoyment of the plaintiff. The mutation in the revenue records are also effected in the name of plaintiff with respect to suit schedule properties under family arrangement. The defendant is not the owner and not in possession of the suit schedule properties at any point of time. The defendant is trying to interfere and cause obstruction for the plaintiff's possession over the suit schedule properties. Hence, the suit.

03. In response to the suit summons, the defendant has appeared and filed written statement and denied all the averments made in the plaint and contended that originally the Sy no.233/4/A measuring 1.63 acres and Survey no. 239/1 belonged to Haamy Naik who has sold the above said property to Chandya Naik through a registered sale deed dated 05-07-1969. That Chandya Naik within 7 days from

purchase has sold the above said property to the defendant through a registered sale deed. Ever since then, the defendant has been in peaceful possession and enjoyment of the said lands till today without anybodies obstruction or interruption. Thereafter, the defendant is the absolute owner and enjoyment of the said property. The defendant in the month June 2015 obtained the ROR's and came to know that Haamya Naik, Rathna Naik, Lakshmi Bai i.e. plaintiff and Roopli Bai names are found in the RORs. The above said persons illegally got mutated their names. The said illegal mutations are not binding on the defendant. That the Haamya Naik illegally sold some extent in above survey number to plaintiff, Lakshmi Bai. The Lakshmi Bai and Roopli Bai are nearest relative to Haamya Naik. The Hamya Naik already sold the above said property including suit property to Chandya Naik. Thereafter, he loses his right over the

sold properties. The subsequent sale deed made by Hamya Naik is not valid and not binding on the defendant. That the defendant is illiterate and is not having knowledge about revenue proceedings and due to lack of knowledge, the defendant has not got mutation in his name. That the defendant after knowing about the illegal entries in the RORs filed ROR Appeal No.66/2015 before the Assistant Commissioner, Hospet against the plaintiff and others against the order of the Tahsildar Kudligi in respect of Dispute No. MR No-4/1998-99 dated 06-02-1999, MR No.35/2005-06 dated 20-06-2006 and M R No. 54/2008-09 dated 12-03-2009 in respect of land purchased by him. In the said appeal, plaintiff appeared through his counsel. Now the said appeal is pending. After filing the said appeal, the plaintiff filed unholy suit against the defendant. That the plaintiff is no way concerned to the suit schedule property and is not

the owner and not in possession and enjoyment of the suit schedule property. Even to this day, the defendant is in peaceful possession and enjoyment of the suit schedule property. Hence, the suit of the plaintiff is liable to be dismissed.

04. The defendant/counter claimant has filed counter claim and contended that the written statement contents are the part and parcel of the counter claim. That the defendant purchased the land bearing Sy.no.233/4/A, measuring 1-63 acres including the suit schedule property and land bearing Survey no.239/1, measuring 5-03 acres including suit schedule property out of 5-55 acres situated at Hampapura Village, Kottur Hobli, Kudligi Taluk, from one Chandya Naik S/o Jagya Naik through a registered sale deed dated 11-07-1969 for valuable consideration of Rs.1,000/-. Ever since the registered sale deed the defendant has been in peaceful possession and enjoyment

of the said lands till today without anybodies obstruction or interruption. That the plaintiff is no way concerned to the suit schedule property and is not the owner and in possession of the same. The plaintiff filed unholy suit against the defendant with an intention to knock off the suit schedule property. Hence this defendant filed present counter claim with respect to the counter claim property. Hence, the counter claim for declaration. The schedule with respect to counter claim is the same as the schedule mentioned in the plaint.

05. The plaintiff has filed rejoinder to counter claim filed by the defendant and contended that the counter claimant is not aware of boundaries of the properties, the relief sought by the counter claimant is not with respect to the entire property alleged to be purchased by him. But it is the same as mentioned in the plaint. The boundaries for the suit properties shown on all sides as remaining land in

the same survey number of counter claimant. Therefore, the counter claim property cannot be identified. The similar suit filed by the counter claimant was dismissed on the ground that he had not furnished the boundaries to the schedule property. Now the counter claimant have included false boundaries to their counter claim schedule. Even then declaration sought for some extent in both S.no.233/4A and S.no.239/2 without proper boundaries is not maintainable. On this count alone the counter claim of the defendant ought to be dismissed. Hence, he prayed to dismiss the counter claim.

06. Based on the pleadings of the parties, Court framed the following issues:-

: I S S U E S :

- 1. Whether the plaintiff proves that he is in peaceful possession and enjoyment of the suit property as on the date of suit?.***

- 2. Whether the plaintiff proves alleged interference by the defendant?**
- 3. Whether the defendants prove he is the absolute owner of Rs.233/4A measuring 0.18 acres and R.S.no.239 measuring 2.77 acres by way of registered sale deed dated 11.07.1969?.**
- 4. Whether the plaintiff is entitled for relief sought for?.**
- 5. Whether the defendant is entitled for relief sought for in counter claim?.**
- 6. What decree or order ?**

Additional issue framed on 01.02.2019

- 1. Whether the defendant proves that he purchased the land bearing Sy.no.233/4A measuring 1.63 acres including suit schedule property and Sy.no.239/1 measuring 5.03 acres including the suit schedule property out of 5.55 acres from one Chandya Naik S/o Lambani Jagya Naik through registered sale deed dated 11.07.1969, since from the date of purchase he is in possession over the same as alleged in the counter claim?.**

07. The plaintiff has not pressed his suit. In order prove the counter claim, the defendant has examined himself as D.W-1 and got marked Ex.D-1 to 7.

08. Heard the counsel appearing for the plaintiff and defendant. Perused the materials available on record.

09. My findings on the above issues are as under:-

Issue No.1&2 : In the Negative.

Issue No.3 : In the Affirmative.

Issue No.4 : In the Negative.

Issue No.5 : In the Affirmative.

Addl Issue No.1: In the Affirmative.

Dated 01.02.2019

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

:REASONS:

10. Issue no.1 to 3 and additional issue dated 01.02.2019:- I have taken these issues together for common discussion as they are interconnected to each other and also to avoid repetition of facts. In order to prove, the counter claimant no.1(c) has been examined as DW-1 and reiterated the counter claimant averments and

got marked 7 documents as Ex.D.1-7. Ex.D-1 is the certified copy of sale deed dated 05.07.1969 under which Hamya Naik has sold an extent of 1.63 acres in Sy.no.233/4A and an extent of 5.03 acres in Sy.no.239/1 to Chandya Naik. Ex.D-2 is the original sale deed dated 11.07.1969 under which Chandya Naik has sold an extent of 1.63 acres in Sy.no.233/4A and an extent of 5.03 acres in Sy.no.239/1 to Chandrashekar who is the defendant herehhhhhhin. Ex.D-3 is the certified copy of sale deed dated 02.12.1998 executed by Hamya Naik in favour of Rathna Naik S/o Chandra Naik with respect to Sy.no.233/4A measuring 0.18 cents out of 1.63 acres and in Sy.no.239/1 an extent of 2.77 acres out of 5.55 acres. Ex.D-4 Encumbrance certificate reflecting the transaction mentioned in the above sale deeds. Ex.D-5 is the order of the Assistant Commissioner dated 15.06.2017 in appeal no.66/2015-16 filed by the defendant herein against the Hamya Naik, Rathna Naik, Laxmi Bai and Rupli Bai under

which it is ordered that already O.S.no.175/2015 is pending and the said appeal no.66/2015-16 filed before the A.C Hospet is subject to the out come of the decision in O.S.no.175/2015. Ex.P-6 is the certified copies of RORs with respect to Sy.no.233/4/A standing in the name of Hamya Naik. The R.T.Cs are subsequently standing in the name of Hamya naik, Ratna Naik, Lakshmi Bai and Rupli Bai. Ex.D-7 is the certified copies of RORs with respect to Sy.no.239/1 measuring 5.55 acres standing in the name of Hamya Naik. It is relevant to note that the Sy.239/1 is sub-divided and Sy.no.239/6 measuring an extent of 2.31 acres is standing in the name of plaintiff.

11. During the course of the trial, the plaintiff has not pressed his suit before adducing evidence. Subsequently defendant no.1 (c) has examined himself as DW1 and has marked 7 documents. In this case, the perusal of the revenue record shows that the survey number involved in this case stood in the name of one Hamya Nayak.

Therefore, the contention of the plaintiff that the suit schedule property or the counter-claim schedule properties are the ancestral properties of the Hamya Naik and his brothers and sisters is not acceptable.

12. It is apparent that the defendant has purchased an extent of 1.63 acres and an extent of 5.03 acres in Survey No.233/ 4A and 239/1 respectively. Now, it is pertinent to note that the defendant is not seeking counter claim with respect to the property purchased by him but he is seeking only declaration with respect to 0.65 acres out of 1.63 acres purchased by him and 2.31 acres out of 5.55 acres. In the cross-examination, it is elicited that he is seeking declaration with respect to portion of the property purchased by him because the plaintiff is denying his title with respect to only the counter claim schedule property which is the portion of the extent purchased by him.

13. With respect to item No.1 which is Survey No. 233/4/A, it is pertinent to note that the defendant has stated that he has purchased an extent of 1.63 acres. But he has sought for declaration only with respect to .65 acres. Towards the eastern side of the said property, he has shown that the land of Narayan Nayak is situated and towards the western side way is situated and towards the north and southern side, the remaining extent belonging to the counter claimant is situated.

14. With respect to Item No. 2 which is Survey No. 239/1, it is pertinent to note that the defendant has stated that he has purchased an extent of 5.03 acres. But he has sought for declaration only with respect to 1.63 acres. Towards the eastern side of the said property, he has shown that the remaining extent belonging to the counter claimant is situated and towards the western side way is situated and towards the north and southern side, the

remaining extent belonging to the counter claimant is situated.

15. However, during his cross examination when he was questioned regarding the boundaries to Item No. 1 he has stated that towards the eastern side the property of Chandyanayak is situated and towards the west way is situated and towards the north Ratna nayak's property is situated and towards the South Muthikal Tanda is situated and with respect to Item No. 2 he has stated that towards the east Ratna Nayak's property is situated and towards the west road is situated and towards the north Chandya Nayak's property is situated and towards the south Muthikal thanda is situated.

16. From the perusal of the boundaries mentioned in the counter claim and from the boundaries elicited in the cross-examination, it is clear that the property which the defendant has sought for declaration in this suit is different from the boundaries stated by him in the cross-

examination. Therefore, there is serious dispute with respect to the identity of the property with respect to which the declaration is sought. If the defendant had sought declaration with respect to the entire extent which was purchased by him, it would be a different issue. But when he is seeking declaration with respect to the portion of the property which he has purchased, the identity of the said property is very much important. When the identity of the property sought with respect to which declaration is sought is in dispute, the relief cannot be granted.

17. The plaintiff has made various suggestions to the defendant suggesting that the survey numbers are the ancestral property and Hamya Nayak did not have the authority to sell the entire extent and his sister and another brother had the joint right in the property. Therefore, Chandya Nayak did not get right under the sale deed marked as Ex.D.1 and that Chandya Nayak did not have any right to alienate the measurements purchased by

the defendants. The D.W.1 has denied the said suggestion and stated that the R.T.Cs were in the name of Hamya Naik and therefore sale deed executed by Hamya Naik is valid. The R.T.C with respect to survey no.233/4/a and survey no.239/1 stood in the name of Hamya Naik. The said R.T.Cs are produced by the plaintiff before the suit was not pressed. There are no materials to state from the materials on hand that the said property was the joint family property. This shows that suit schedule property are not the ancestral property of Hamya Naik.

18. However, the plaintiff has not pressed his case. Therefore no much finding can be given on the case of the plaintiff. However, the defendant's sale deed is made prior to the sale deed of the plaintiff. But since the boundaries to the suit schedule property are not correctly mentioned there is dispute with respect to the identity with respect to the counter claim schedule property. However the said property is inclusive of the extent purchased by the

defendant. The sale deed produced by defendant marked as Ex.D-1 and 2 shows that the defendant has acquired the counter-claim property along with the extent purchased by him as per Ex.D2. Therefore, the defendant is entitled to the relief the relief of declaration sought for. The perusal of the sale deed shows that defendant has purchased the property mentioned in the Ex.D2 and it is clear that after Hamya Naik has sold the properties mentioned in Ex.D-1, he has lost the right over the properties sold by him. Thereafter, any family arrangement or sale deed made by Hamya Nail is not valid. Therefore issue no.1 & 2 are answered in the **Negative** as the plaintiff has not pressed his suit and issue no.3 and additional issue are answered in the **affirmative** as the defendant has proved these issues.

19. Issue no.4 and 5:- These issues are regarding the plaintiff and defendant being entitled to the relief sought. Since, the plaintiff has not pressed the suit, he is entitled

to any relief sought in the plaint. Since the defendant has proved that he is the owner of the counter-claim schedule property, he is entitled to relief sought for. Accordingly, issue no.4 is answered in the **Negative** and issue no.5 is answered in the **Affirmative**.

20. Issue no.6: In view of the conclusion and discussion arrived at above issues and addl issues, I proceed to pass the following:-

:O R D E R:

The suit instituted by the plaintiff is hereby dismissed.

The counter-claim instituted by the defendant is hereby decreed.

The defendant is declared as the owner of the counter-claim schedule property.

No order as to cost.

Draw decree accordingly.

(Dictated to the stenographer directly on computer typed by him corrected and then pronounced by me in the open court on this 27th day of **March 2025**.)

(**Smt. C. Mahalakshmi**)
Civil Judge and JMFC, Kudligi

ANNEXURE

List of witnesses examined and exhibits marked on

behalf of Plaintiff : Nil

List of witnesses examined on behalf of counter claimant :

DW-1 : G.Nagaraja

List of exhibits marked on behalf of counter claimant :

Ex.D-1 : Sale deed.
Ex.D-2 : Sale deed.
Ex.D-3 : Certified copy of sale deed.
Ex.D-4 : Encumbrance certificate.
Ex.D-5 : Order of AC dated 15.06.2017.
Ex.D-6 & 7 : RORs.

(**Smt.C.Mahalakshmi**)
Civil Judge and JMFC, Kudligi