



**IN THE COURT OF THE CIVIL JUDGE & JMFC.,
AT: HAGARIBOMMANAHALLI**

DATED THIS THE 26th DAY OF MARCH 2026

:: PRESENT ::

**SRI. SAYED MOHIUDDIN URF KHAWAJA PEERAN, B.A., LL.B. (Spl.),
CIVIL JUDGE & J.M.F.C., HAGARIBOMMANAHALLI.**

O.S.No.127/2017

PLAINTIFF:- 1) **Smt. Kesaramandi Shavantravva
W/o Late K. Nagappa,**
Dead by her LR's: K.Kadlappa S/o K.Nagappa,
Aged : 55 years, Occ: Agriculturist,
R/o Varadapura Village
Hagaribommanahalli Taluk, Ballari District.

(Rep. by Sri.A.K.,- Advocate)

Vs.

DEFENDANTS:- 1) **Holagundi Kotresh S/o Late Basappa**
Aged : 55 years, Occ: Agriculturist,
R/o Chilagodu Village
Hagaribommanahalli Taluk, Ballari District.

2) **Smt. Nagamma W/o Kotreshappa**
Aged : 56 years, Occ: House wife,
R/o House No.158, Chilagodu Village
Hagaribommanahalli Taluk, Ballari District.

(Def.No.1 Rep. by Sri.C.B.P.- Advocate)

(Def.No.2 Rep. by Sri.V.N.- Advocate)

Date of institution of the suit	10.07.2017
Nature of the suit	DECLARATION OF TITLE AND PERMANENT INJUNCTION

Date of commencement of recording of evidence	05.08.2019		
Date on which the Judgment was pronounced	26.03.2026		
TOTAL	YEARS	MONTHS	DAYS
	8	8	16

(SAYED MOHIUDDIN URF KHAWAJA PEERAN)
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI.

JUDGMENT

The plaintiff has filed the present suit against the defendants for the relief of declaration of title and Permanent Injunction with respect of suit schedule property bearing Sy.No.107/C measuring 6.80 acres out of which 3.40 acres within the boundaries towards East:Land in same survey number of Dodda Basappa, West:Land of Uggannavara Sangappa, North: Land of Kariyamma Jali and South: Land of Hulimani Manjappa, situated at Bachigondanahalli Village, H.B.Halli Taluk.

2. According to the plaintiff, she is the absolute owner and in possession and enjoyment of the suit schedule property. Her mother Smt.Uggannanavara Hanumavva W/o Uggannanavara Sanna Kariyappa has executed the registered settlement deed in favour of the plaintiff under document No.771/1961 dated 23.05.1961. From the date of execution of document she and her family members are in possession and enjoyment of the suit schedule property. She is residing at Varadapura Village in her husband's house, due to inconvenience she is leased the suit schedule property to the third persons, but she in physical possession and enjoyment of the suit schedule property. The defendants has no manner of right, title and interest over the suit schedule property. The defendant by misguiding the revenue authorities got mutated his name in the revenue records of the suit schedule property. Recently her son Kadleppa has collected the records of the suit schedule property to obtain the crop loan from the bank then only she has come to know that, the defendant has got entered his name in the revenue records of the suit

schedule property. She has approached the Assistant Commissioner, Hosapete to set aside the illegal mutation entry and to set aside the mutation order. The defendant is trying to dispossess the plaintiff from the suit schedule property. With left no option she has filed the present suit. Hence she prays to decree the suit.

3. After registration of the suit, suit summons was issued to the defendant No.1. He has served with the same. In response to the same, he has appeared before the Court through his Counsel and filed the written statement by denying the case of the plaintiff and further contended that, the suit schedule property belongs to brother of his mother Uggannavara Hulugappa. The said Uggannavara Hulugappa has allotted the suit schedule property to his sister Bharmavva who is the mother of defendant. The Defendant is the legal heir of the said Bharmavva. The defendant is in possession and enjoyment of the suit schedule property. The plaintiff is not the owner on the basis of alleged settlement deed. Said alleged settlement deed is not at all acted upon. The

defendant and his mother are in actual possession and enjoyment of the suit schedule property. Plaintiff has no manner of right, title and interest over the same. The plaintiff is not in possession and enjoyment of the same. Therefore the suit for declaration without seeking the relief of possession is not maintainable. No boundaries are mentioned in the alleged settlement deed. With an intention to harass the defendant, the plaintiff has filed the present suit. Hence he prays to dismiss the suit.

In view of order on I.A.No.4 the defendant No.2 impleaded in the present suit. The defendant No.2 appeared before the Court through her counsel and filed written statement. The defendant No.2 in her written statement she has denied the case of the plaintiff and further contended that, the suit schedule property Sy.No.107/C measuring 6.80 acres out of which 3.40 acres originally belongs to one Uggannavara Dodda Devappa who is the great-grand-father of defendant No.2. The said Uggannavara Dodda Devappa died leaving behind two sons by name Dodda Kariyappa and Sanna

Kariyappa. Under the partition the suit schedule property fallen to the share of Dodda Kariyappa and remaining 3.40 acres of land was fallen to the share of Sanna Kariyappa. After the death of Dododa Kariyappa his sons and daughters by name Dodda Nagappa, Hulugappa and Bharmavva are in actual possession and enjoyment of the suit schedule property. The said Late Hulugappa died leaving behind sole daughter i.e., defendant No.2. Dodda Nagappa and Kariyamma W/o Hulugappa have jointly executed the relinquishment deed in favour of the defendant No.1 in the year 1997-98 with respect of suit schedule property. On the basis of the said relinquishment deed mutation of the suit schedule property has been effected in the name of defendant No.1. Then after defendant No.1 in the year 2019 has executed the registered gift deed in her favour with respect of suit schedule property. on the basis of the said gift deed the defendant No.2 is in possession and enjoyment of the suit schedule property. The plaintiff has no manner of right, title and interest over the suit schedule property. The land acquired by the Sanna Kariyappa

was sold by his legal heirs. With an intention to harass the defendant the plaintiff has filed the false suit. Hence she prays to dismiss the suit.

4. On the basis of above pleadings my learned Predecessor has framed the following issues.

ISSUES

1) Whether the plaintiff proves that plaintiff is the absolute owner and is in possession of the suit schedule property?

2) Whether the plaintiff proves that the alleged interference by the defendant in respect of the suit schedule property?

3) Whether the plaintiff is entitled to the relief sought for?

4) What Order or Decree?

5. During the course of trial plaintiff reported as dead, her legal heir is brought on record. The plaintiff in order to prove the case, legal heir of plaintiff examined as PW1, two witnesses examined as PW2 and PW3, got marked documents Ex.P.1 to P.27. On the other hand, the defendant No.1 examined as DW1,

defendant No.2 examined as DW2, two witness examined as DW3, DW4 and got marked documents Ex.D.1 to Ex.D.2.

6. Heard the arguments and perused the records.

7. My answers to the above issues are as under:

Issue No.1: In the NEGATIVE.

Issue No.2: In the NEGATIVE.

Issue No.3: In the NEGATIVE.

Issue No.4 As per final Order, for the following;

:: REASONS ::

8. **Issue No.1 to 3** :: As the facts involved in Issue No.1 to 3 are interlinked together, hence they are taken up together for common consideration.

9. The present suit is filed by the plaintiff against the defendants for the relief of declaration of title and Permanent Injunction with respect of suit schedule property. The plaintiff in order to prove the case, legal heir of plaintiff examined as PW1, two witnesses examined as PW2 and PW3, got marked documents Ex.P.1 to P.27. Registered settlement deed dated

23.05.1961 Ex.P.1. Certified copy of the registered Re-settlement register dated 23.05.1961 Ex.P.2. Certified copy of the registered settlement deed dated 23.05.1961 Ex.P.3. Encumbrance certificates Ex.P.4 and Ex.P.5. Certified copies of the RTC extracts of Sy.No.107/C measuring 6.80 acres for the year 1968-69, 1977-78, 1978-79, 1983-84 to 1987-88, 1988-89 to 1992-93, 1983-84 to 1987-88, 1998-99 to 2001-02, 1993-94 to 1997-98 Ex.P.6 to Ex.P.11. RTC extract of suit schedule property Sy.No.107/C measuring 6.80 acres for the year 2002-03 Ex.P.12. RTC extract of suit schedule property Sy.No.107C/1 measuring 3.40 acres for the year 2015-16 Ex.P.13. Received copy of the application given by the plaintiff to the Tahasildar Ex.P.14. Certified copy of the mutation application Ex.P.15. Certified copy of the relinquishment deed Ex.P.16. Certified copy of the M.No.56/1997-98 Ex.P.17. Certified copy of Genealogy Ex.P.18. Prapathra Ex.P.19. Certified copies of Mahazar Ex.P.20 and Ex.P.21. Certified copy of M.No.121/92-93 Ex.P.22. Statements Ex.P.23 to Ex.P.27.

9(i). On the other hand, the defendant No.1 examined as

DW1, defendant No.2 examined as DW2, two witness examined as DW3, DW4 and got marked documents Ex.D.1 to Ex.D.2. Registered gift deed dated 09.05.2019 Ex.D.1 and RTC extract of Sy.No.107C/1 Ex.D.2.

10. Specific case of the plaintiff is that, she is the absolute owner and in possession and enjoyment of the suit schedule property. Her mother Uggannanavara Hanumavva has executed the registered settlement deed dated 23.05.1961 in favour of the plaintiff with respect of suit schedule property. From the date of the said document she in possession and enjoyment of the suit schedule property. Due to some inconvenience she has leased the suit schedule property to third parties. The defendants have no manner of right, title and interest over the suit schedule property. The defendant No.1 by misguiding the revenue authorities got mutated his name in the records of the suit schedule property. Recently on 19.06.2019 her son Kadellappa has collected the RTC of the suit schedule property, then she has come to know about the said mutation entries. The plaintiff is the absolute owner of the suit schedule

property, the defendants are illegally trying to interfere with her peaceful possession and enjoyment over the same. Hence she prays to decree the suit.

11. The contention of the defendant No.1 is that, the plaintiff has no manner of right, title and interest over the suit schedule property. The suit schedule property belongs to the Uggannavara Hulugappa who is the brother of Bharmavva. The said Hulugappa has allotted the suit schedule property to the said Bharmavva. The defendant No.1 is the legal heir of said Bharmavva. The defendant No.1 is in possession and enjoyment of the suit schedule property. Mutation of the suit schedule property also effected in his name. The plaintiff has no manner of right, title and interest over the suit schedule property. The alleged settlement deed is not acted upon, the plaintiff has not acquired the title over the suit schedule property on the basis of alleged settlement deed. The plaintiff is not in possession and enjoyment of the suit schedule property. The defendant No.1 is in actual possession and enjoyment of the suit schedule property. Suit for declaration of title without seeking the relief of

possession is not maintainable. Hence he prays to dismiss the suit.

12. The contention of the defendant No.2 is that the suit schedule Sy.No. 107/C measuring 6.80 acres belongs to Uggannavara Dodda Devappa who is the great-grand-father of defendant No.2. The said Dodda Devappa died leaving behind two sons Dodda Kariyappa and Sanna Kariyappa. Under the partition suit schedule property fallen to the share of Dodda Kariyappa and remaining 3.40 acres of land was fallen to the share of Sanna Kariyappa. After the death of Dodda Kariyappa his children are in possession and enjoyment of the suit schedule property. The said Hulugappa died leaving behind his sole daughter defendant No.2. Dodda Nagappa and Kariyamma W/o Hulugappa have executed the relinquishment deed with respect of suit schedule property in favour of the defendant No.1. Later on the defendant No.1 has executed the registered gift deed with respect of suit schedule property in favour of the defendant No.2. The defendant No.2 is in possession and enjoyment of the suit schedule property. The plaintiff has no manner of right, title

and interest over the same. Hence she prays to dismiss the suit.

13. I have perused the oral and documentary evidence adduced by both the sides. The plaintiff has produced the registered settlement deed dated 23.05.1961 and certified copy of the said document Ex.P.1 and Ex.P.3. As per the said documents it appears that the mother of the plaintiff has executed the said document with respect of suit schedule property in favour of the plaintiff. The plaintiff has produced the certified copy of re-settlement register. In the said document Sy.No.107/C measuring 6.80 acres stands in the name of Uggannavara Dodda Devappa. The plaintiff has produced the Encumbrance certificates Ex.P.4 and Ex.P.5. The plaintiff has produced the certified copy of RTC extracts of suit schedule property from the year 1968-69, 1977-78, 1978-79, 1983-84 to 1987-88, 1988-89 to 1992-93, 1983-84 to 1987-88, 1998-99 to 2001-02, 1993-94 to 1997-98 Ex.P.6 to Ex.P.11. In Ex.P.6 certified copy of RTC extract for the year 1968-69, 1977-78 and 1978-79 the name of Uggannavara Hulugappa is entered for the year 1968-69 and for the year

1977-78 and 1978-79 name of Holagundi Basappa is entered. In Ex.P.9 certified copy of RTC extract of Sy.No.107C measuring 6.80 acres for the year 1983-84 to 1987-88 name of Hoagundi Basappa is entered. In Ex.P.8 certified copy of RTC extract of Sy.No.107C measuring 6.80 acres for the year 1988-89 to 1992-93 in coloumn No.9 name of Uggannanavara Hulugappa is entered to an extent of 3.40 acres and name of Shekharappa is entered to an extent of 3.40 acres. In Ex.P.10 certified copy of RTC extract of the above said property for the year 1998-99 to 2001-02 name of Rudrappa S/o V.Kotresh Holagundi is entered. In Ex.P.11 certified copy of RTC extract of Sy.No.107/C measuring 6.80 acres for the year 1993-94 to 1997-88 name of Uggannanavara Hulugappa is entered for the year 1993-94 to 1996-97 and for the year 1997-98 name of Holagundi Kotresh is entered to an extent of 2.00 acres, name of V.Kotrappa is entered to an extent of 1.40 acres. The said entries are also reflected in Ex.P.12 RTC extract of Sy.No. 117/c for the year 2002-03. The plaintiff has produced the RTC extract of Sy.No.117C/1 measuring 3.40 acres for the

year 2015-16 on going through the same it discloses that as on the date of filing of the suit, the suit schedule property stands in the name of defendant No.1.

14. According to the plaintiff she is the absolute owner and in possession and enjoyment of the suit schedule property on the basis of registered settlement deed Ex.P.1. I have gone through the said document, said document is registered instrument, as per the recital of the said document it discloses that, the mother of the plaintiff Hanumavva has executed the said document in favour of plaintiff with respect of $\frac{1}{2}$ share in Sy.No.107/C measuring 6.80 acres. In the said document no specific boundaries of the said $\frac{1}{2}$ share are mentioned. As per the recitals of the said document, the mother of the plaintiff Hanumavva executed the said document in favour of plaintiff and as per the said document possession of the said property has remain with plaintiff mother Hanumavva. In the said document there is a condition that after the death of Hanumavva possession of the suit schedule property will goes to the plaintiff. In the said document it is mentioned that,

records of the said property stands in the name of Huligevva, therefore she has no right to alienate the said property.

Relevant recitals of Ex.P.1 and Ex.P.3 is as under;

“ನಿನ್ನ ಮೇಲೆ ನನಗೆ ಯಿರುವ ವಿಷೇಷ ಪ್ರೀತಿಯಿಂದ ನಾನು ಯಾರಿಗೂ ಯಾವುದೇ ರೀತಿಯಾಗಿ ಪರಾಧೀನ ಮಾಡದೆ ನನ್ನ ಹಕ್ಕು ಅಧೀನಾನುಭವದಲ್ಲಿರುವ ಮೇಲ್ಕಂಡ ಮೊತ್ತ ಬೆಲೆ ಬಾಳುವ ಷೆಡ್ಯೂಲ್ ಅಸ್ತಿ ನಿನ್ನ ಹೆಸರಿಗೆ ಬರೆಸಿಕೊಟ್ಟು ಈ ದಸ್ತಾವೇಜು ದ್ವಾರ ಶೆಟ್ಟು ಮಾಡಿರುತ್ತೀನಿ. ಈ ಅಸ್ತಿ ನನ್ನ ಜೀವಮಾನ ಇರುವವರೆಗೂ ನನ್ನ ಸ್ವಾಧೀನದಲ್ಲಿ ಇಟ್ಟುಕೊಂಡು ಇರುತ್ತೇನೆ ತದನಂತರ ಈ ಅಸ್ತಿ ನೀನು ನಿನ್ನ ಸ್ವಾಧೀನ ಮಾಡಿಕೊಂಡು ಸಮಸ್ತ ಹಕ್ಕುಗಳಿಂದ ಅನುಭವಿಸಲು ನೀನು ಸ್ವತಂತ್ರಳು ಹೀಗೆಂದು ನನ್ನ ಮುದ್ದು ರಾಜಿಯಿಂದ ಒಪ್ಪಿ ಬರೆಸಿಕೊಟ್ಟ ಸೆಟೆಲ್‌ಮೆಂಟ್ ದಸ್ತಾವೇಜು ಸಹಿ.....

ಷೆಡ್ಯೂಲ್ ಬಳಾರಿ ಡಿ. ಹೊಸಪೇಟೆ ಒರಿಗೆ ಸೇರಿದ ಮಲ್ಲಾಪುರ ತಾ. ಬಾಚಿಗೊಂಡನಹಳ್ಳಿ ಸೊನ್ನ ಯ ಕುಷ್ಟಿ ಸ.ನಂ.107/ಸಿ ಯ 6.80 ಸೆ, ತ.ರು. 2.69 ಯ ಪೂ ನಂಬರ್‌ನಲ್ಲಿ 1/2 ಹಿಸ್ಸೆ ಸಮೂಹಿ ಈ ಜಮೀನಿನ ಮೇಲೆ ಹುಲುಗೆವ್ವನ ಹೆಸರಲ್ಲಿ ಪಟ್ಟಾ ಇದ್ದು ನನ್ನ ಹಕ್ಕು ಅಧೀನಾನುಭವದಲ್ಲಿರುವ ಜಮೀನು ಈ ಅಸ್ತಿ ಪರಾಧೀನ ಮಾಡುವುದಕ್ಕೆ ನನಗೆ ಹಕ್ಕು ಯಿರುವುದಿಲ್ಲ. ”

As stated above in the said document no boundaries of the suit schedule property is mentioned. As per the said document at the time of execution of the said document the said property was not stands in the name of mother of the

plaintiff and the said property stands in the name of Huligevva. The plaintiff in the plaint has not stated anything that who is the said Huligevva, what is the relation of said Huligevva with the mother of the plaintiff Hanumavva. In the above said settlement deed Ex.P.1 the mother of the plaintiff herself stated that she has no right to alienate the said property. Under such circumstances, the plaintiff has not acquired any valid title over the suit schedule property.

In the reported decisions **2023 SCC online SC 1483 (P.Kishore Kumar Vs. Vittal K. Patekar) in Para No.19 the Hon'ble Supreme Court of India** held as under:

19. It is settled law that a vendor cannot transfer a title to the vendee better than he himself possesses, the principle arising from the maxim *nemo dat quod non habet*, i.e., “no one can confer a better title than what he himself has.” In the present case, the plaintiff's vendor having been denied the right of title in the land by the

Commissioner's order, could not have conveyed the same to her vendee.

15. The plaintiff in her plaint, she has not stated anything that what is the date of death of her mother and she has not stated in the plaint that after the death of her mother whether she has acquired the possession of the suit schedule property and she has not stated anything in the plaint that, after the death of her mother what effort she has made to get mutate the suit schedule property into her name. In the plaint the plaintiff shown the suit schedule property as Sy.No.107/C measuring 3.40 acres out of 6.80 acres within the specific boundaries. In the said resettlement deed Ex.P.1 no boundaries of the suit schedule property is mentioned. The plaintiff in support of her case not produce any documents before the Court to show that she is in possession and enjoyment of the suit schedule property within the given boundaries and extent of the plaint schedule. As per Ex.P.13 and as per Ex.D.2 RTC extracts of suit schedule properties it discloses that as on the date of filing of the suit defendant No.1 is in possession and enjoyment

of the suit schedule property. The plaintiff has filed the present suit against the defendants for the relief of declaration of title without seeking the relief of possession. When plaintiff is not in possession of suit schedule property the suit for declaration of title without seeking the relief of recover of possession is not maintainable.

In the reported decisions **(2024) 5 SCC 282 VASANTHA (DEAD) THROUGH LEGAL REPRESENTATIVE.. Vs. RAJALAKSHMI ALIAS RAJAM (DEAD) THROUGH LEGAL REPRESENTATIVES...** in Para No.49 to 52 the Hon'ble **Supreme Court of India** held as under:

"49. We now proceed to examine the law on this issue. As submitted by the learned senior counsel for the Appellant, in [Vinay Krishna v. Keshav Chandra \(two-Judge Bench\)](#), this Court while considering Section 42 of the erstwhile Specific Relief Act, 1877 to be pari materia with Section 34 of SRA, 1963 observed that the plaintiff's not being in possession of the property [in that case](#) ought to have amended the plaint for the relief of recovery of possession in view of the bar included by the proviso.

50. This position has been followed by this Court in [Union of India v. Ibrahim Uddin \(two-Judge Bench\)](#), elaborated the position of a suit filed without the consequential relief. It was observed: (SCC p. 173, paras 55-58)

“55. The section provides that courts have discretion as to declaration of status or right, however, it carves out an exception that a court shall not make any such declaration of status or right where the complainant, being able to seek further relief than a mere declaration of title, omits to do so.

56. In *Ram Saran v. Ganga Devi*⁷ this Court had categorically held that the suit seeking for declaration of title of ownership but where possession is not sought, is hit by the proviso of *Section 34* of the Specific Relief Act, 1963 and, thus, not maintainable. In *Vinay Krishna v. Keshav Chandra*⁸ this Court dealt with a similar issue where the plaintiff was not in exclusive possession of property and had filed a suit seeking declaration of title of ownership. Similar view has been reiterated observing that the suit was not maintainable, if barred by the proviso to *Section 34* of the Specific Relief Act. (See also *Gian Kaur v. Raghubir Singh*²²).

57. In view of the above, the law becomes crystal clear that it is not permissible to claim the relief of declaration without seeking consequential relief.

58. In the instant case, the suit for declaration of title of ownership had been filed, though Respondent 1-plaintiff was admittedly not in possession of the suit property. Thus, the suit was barred by the provisions of *Section 34* of the Specific Relief Act and, therefore, ought to have been dismissed solely on this ground. The High Court though framed a substantial question

on this point but for unknown reasons did not consider it proper to decide the same.”

51. In *Venkataraja v. Vidyane Doureradjaperumal* (two-Judge Bench), the purpose behind Section 34 was elucidated by this Court. It was observed that the purpose behind the inclusion of the proviso is to prevent multiplicity of proceedings. It was further expounded that a mere declaratory decree remains non-executable in most cases. This Court noted that the suit was never amended, even at a later stage to seek the consequential relief and therefore, it was held to be not maintainable. This position of law has been reiterated recently in *Akkamma v. Vemavathi* (two-Judge Bench).

52. This Court in *Arulmigu Chokkanatha Swamy Koil Trust, v. Chandran* (two-Judge Bench) while reversing the High Court decree, observed that because of Section 34 of the SRA, 1963, the plaintiff not being in possession and claiming only declaratory relief, ought to have claimed the relief of recovery of possession. It was held that the Trial Court rightly dismissed the suit on the basis that the plaintiff has filed a suit for a mere declaration without relief for recovery, which is clearly not maintainable”.

16. In the plaint the plaintiff has not pleaded, who is the absolute owner of the suit schedule property and she has not pleaded that how and on what basis the mother of the plaintiff has acquired the suit schedule property. During the course of

arguments the counsel for the plaintiff argued that the suit schedule property originally belongs to one Dodda Devappa. The said Dodda Devappa had two sons by name Dodda Kariyappa and Sanna Kariyappa. Sanna Kariyappa is the father of the plaintiff he acquired 3.40 acres of land in Sy.No.107/C total measuring 6.80 acres and Dodda kariyappa acquired the 3.40 acres of land in the above said survey number. But the plaintiff has not pleaded the said pleadings in the plaint. It is settled principles of law that what is not pleaded, cannot be argued, as for the purposes of adjudication, it is necessary for the other party to know the contours of the case it is required to meet.

In the reported decision **(2024) 2 SCC 144 Mohammed Abdul Wahid V/s Nilofer** in **Para No.37 and 38** of the said decision the **Hon'ble Supreme Court of India** held as under.

37. It is settled law that what is not pleaded cannot be argued, as for the purposes of adjudication, it is necessary for the other party to know the contours of the case it is required to meet. It is equally well settled that the requirement of having to plead a particular argument does not include exhaustively doing so. We may refer to [Ram Sarup Gupta v. Bishun Narain Inter College](#)

14, wherein it was observed as follows:

"6. ... It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. To have a fair trial it is imperative that the party should settle the essential material facts so that the other party may not be taken by surprise. The pleadings however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Sometimes, pleadings are expressed in words that may not expressly make out a case in accordance with a strict interpretation of the law. In such a case the court must ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead, the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings; instead, the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings,

parties knew the case and they proceeded to trial on those issues by producing evidence in that event it would not be open to a party to raise the question of absence of pleadings in appeal...."

38. We may also refer to Udhav Singh v. Madhav Rao Scindia¹⁵, wherein a bench of two learned judges observed:

"25...If the plea or ground of defence "raises issues of fact not arising out of the plaint", such plea or ground is likely to take the plaintiff by surprise, and is therefore required to be pleaded. If the plea or ground of defence raises an issue arising out of what is alleged or admitted in the plaint, or is otherwise apparent from the plaint, itself, no question of prejudice or surprise to the plaintiff arises. Nothing in the rule compels the defendant to plead such a ground, not debars him from setting it up at a later stage of the case, particularly when it does not depend on evidence but raises a pure question of law turning on a construction of the plaint."

17. It is the suit for declaration of title and Permanent Injunction filed by the plaintiff against defendants with respect of suit schedule property. The plaintiff has filed the present suit on the basis of Ex.P.1 registered settlement deed. In the said document there is no boundaries of the suit schedule property is mentioned. In the said document the executant himself stated that she has no right to alienate the said property. In the said

document it is a condition that till the life time of executant, the executant is remained in possession of the said property and after her death possession of the suit schedule property will goes to the plaintiff. As stated above the plaintiff in the plaint has not stated anything that when her mother died and whether after the death of her mother she has acquired the possession of the suit schedule property. As stated above the plaintiff has filed the present suit for the relief of declaration of title and Permanent Injunction. Burden of proving the case is on the plaintiff, when the plaintiff is approach the Court for appropriate relief it is the duty of the plaintiff to prove her case independently on the basis of valid, cogent and material documents.

In the reported decisions **2023 SCC Online SC 1483 (P.Kishore Kumar Vs. Vittal K. Patekar) in Para No.24 and 25 the Hon'ble Supreme Court of India** held as under:"

24. This Court, in [Union of India and Ors. vs. Vasavi Co-operative Housing Society Limited and Ors.6](#), held as under:

"15. It is trite law that, in a suit for declaration of title, the burden always

lies on the Plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the Defendants would not be a ground to grant relief to the Plaintiff.”

25. This decision was affirmed, and further elaborated upon, in Jagdish Prasad Patel (Dead) thr. LRs. and Ors. vs. Shivnath and Ors.7, wherein this Court has succinctly summarized the law on burden of proof in suits for declaration of title as follows:

“44. In the suit for declaration for title and possession, the Plaintiffs-Respondents could succeed only on the strength of their own title and not on the weakness of the case of the Defendants-Appellants. The burden is on the Plaintiffs-Respondents to establish their title to the suit properties to show that they are entitled for a decree for declaration. The Plaintiffs-Respondents have neither produced the title document i.e. patta-lease which the Plaintiffs-Respondents are relying upon nor proved their right by adducing any other evidence. As noted above, the revenue entries relied on by them are also held to be not genuine. In any event, revenue entries for few Khataunis are not proof of title; but are mere statements for revenue purpose. They cannot confer any right or title on the party relying on them for proving their title.”

On going through the entire materials available on record I am of the opinion that, the plaintiff is failed to prove her case. On the basis of above reasons and discussion, I answered **Issues No.1 to 3 in the NEGATIVE.**

18. Issue No.4:- For the aforesaid reasons and discussions made above, I proceed to pass the following:-

ORDER

The suit of the plaintiff is hereby dismissed. No order as to costs.

Draw decree accordingly.

Dictated to the Stenographer, transcribed & computerized by her, transcript revised & corrected by me, and then pronounced in the open Court on this the 26th DAY OF MARCH 2026.

**(SAYED MOHIUDDIN URF KHAWAJA PEERAN)
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI**

-ANNEXURE-

The list of witnesses examined on behalf of plaintiffs:

PW.1 : K.Kadleppa S/o K.Nagappa

PW.2 : Dattatreya S/o Hanumanthappa.

PW.3 : Sonnada Pakkiramamma W/o Sonnada Basavarajappa

The list of documents exhibited on behalf of plaintiffs:-

Ex.P.1 : Registered settlement deed dated 23.05.1961

Ex.P.2 : Certified copy of the registered Re-settlement register dated 23.05.1961

- Ex.P.3 : Certified copy of the registered Re-settlement register dated 23.05.1961
- Ex.P.4 & P.5: Encumbrance certificates
- Ex.P.6 to 11: Certified copy of the RTC extracts of Sy.No.107/C
- Ex.P.12 : RTC extract of suit schedule property Sy.No.107/C
- Ex.P.13 : RTC extract of suit schedule property Sy.No.107C/1
- Ex.P.14 : Received copy of the application given to the Tahasildar by the plaintiff
- Ex.P.15 : Certified copy of the mutation application
- Ex.P.16 : Certified copy of the relinquish deed
- Ex.P.17 : Certified copy of the M.No.56/1997-98
- Ex.P.18 : Certified copy of Genealogy
- Ex.P.19 : Prapathra
- Ex.P.20 & 21: Certified copies of Mahazar
- Ex.P.22 : Certified copy of M.No.121/92-93
- Ex.P.23 to P.27: Statements

The list of witnesses examined on behalf of defendants:

- DW.1: Holagundi Kotresh S/o Late Basappa
- DW.2: Smt. Nagamma W/o H. Kotreshappa
- DW.3: Uggannavara Basavaraj S/o Uggannavara Nagappa

The list of documents exhibited on behalf of defendants: -

- Ex.D.1 : Registered gift deed dated 09.05.2019
- Ex.D.2 : RTC extract of Sy.No. 107C/1

(SAYED MOHIUDDIN URF KHAWAJA PEERAN)
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI.