

KAVN500019312025



**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC
AT HARAPANAHALLI.**

Present:-

Before: Smt Usharani. R. B.A.L., LL. M.,
Senior Civil judge and JMFC,
Harapanahalli

R.A.No.28/2025

Dated this 1st day of April 2026

Appellant:

Sri. K.Ajithkumar S/o Late
Brammappa, aged about 64 years,
Agriculturist, R/o Harapanahalli town,
Vijayanagara district.

(By Sri K.B.R, Advocate)

- V/s -

Respondents

1.Sri. Edigra Pakkerappa S/o Late
Thumbappa, aged about 56 years, R/o
Vaddinadadapura village,
Harapanahalli taluk, Vijayanagara
district.

2. Smt. Edigara Laxmavva @ Sitamma,
W/o Late Lakkappa, aged about 60
years, R/o Vaddinadadapura village,
Harapanahalli taluk, Vijayanagara
district.

(By Sri K.M.C., Advocate)

Date and nature of the decree or order appealed against	Judgment and decree dated 27.06.2025 passed in O.S.No.196/2023 by the Learned Civil Judge and JMFC, Harapanahalli.						
Date of Institution of the appeal	29.07.2025						
Judgment pronounced on	01.04.2025						
Duration of the appeal	<table> <tr> <td><u>Years</u></td> <td><u>Months</u></td> <td><u>Days</u></td> </tr> <tr> <td>00</td> <td>08</td> <td>03</td> </tr> </table> <p>(Smt Usharani.R) Senior Civil Judge and JMFC., Harapanahalli</p>	<u>Years</u>	<u>Months</u>	<u>Days</u>	00	08	03
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00	08	03					

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

1. This appeal is filed by the plaintiff feeling aggrieved by the dismissal of the suit before the trial court.

2. **Facts of the case in a nutshell:**

The plaintiff has filed the suit seeking the relief of declaration that plaintiff is the absolute owner in possession land in Sy.No. 219/F measuring 9 acres 69 cents and for permanent injunction. It is averred that the suit land originally belonged to the grand father of the plaintiff Kanchikere Bharamappa . He had a wife Sumithamma and three sons Bommappa, Chandranatha,

Neminatha and two daughters Shakunthamma and Kamamma. Among them the propositus Kanchikere Bommappa, Sumithamma and sons Bommappa Chandranatha and Nemithan are dead. The third son of propositus Neminatha and his wife Sukanya died issue less. The suit schedule property was originally belonging to the Neminathappa and his name is entered as an owner and possessor during the year 1968-69 up to 1988-89. Then Neminathappa and Smt.Sukanya died issue less. After the death of Neminathappa S/o Bharamappa suit land was mutated in the name of plaintiff in the family partition as per the mutation No.14/1988-89 dated 29.12.1988. The plaintiff thereafter mortgaged the suit property in favour of PACS Thogarikatti and SBI Madalageri and borrowed loan. Since then the plaintiff is in actual possession and enjoyment of the suit land without interruption from anybody. The defendants without any right title have cause interruption and has restrained and tried to obstruct the peaceful possession. Therefore the plaintiff was constrained to filed the suit seeking declaration of title and for constitutional relief of perpetual injunction.

3. In the trial court in pursuance of suit summons defendant No.1 and 2 appeared through advocate and contested the case. Defendants did not file any written

statement inspite of opportunity. Thereafter the case was posted for evidence of plaintiff.

4. In the order to prove the case the plaintiff relied on the evidence of PW1 and got marked Ex.P.1 to 30. Defendants have not lead any evidence in rebuttal.

5. The trial court had framed the following :

POINTS FOR CONSIDERATION

1. Whether plaintiff proves that he is absolute owner of the suit schedule property?
2. Whether plaintiff is entitled to the relief claimed in the plaint?
3. What order or decree?

6. After hearing the trial court answered point no.1 and 2 in the negative and dismissed the suit of the plaintiff with costs.

7. Feeling aggrieved by the dismissal of the suit the plaintiff herein have proffered the appeal on the grounds that trial court has committed error in dismissing the suit. Findings given on Points 1 to 3 are erroneous and not sustainable in law. Grandfather of the plaintiff was

Bharamappa and trial court observed that there was ambiguity in respect in the name of grandfather of the plaintiff. The findings is not tenable. Trial court came to the conclusion that plaintiff has not placed material to show how plaintiff is connected to Neminatha and came to conclusion that plaintiff failed to prove genealogy and dismissed the suit which is not proper. The position of law in respect to acquisition of property and partition of the family was not considered by the trial court. Infact the defendants had not at all filed any written statement and they were third parties unconcerned with the family of the plaintiff. Answering point No.1 and 2 against the plaintiff resulted in miscarriage of justice. Trial court did not consider the vital documents and evidence produced by the plaintiff and came to an erroneous conclusion. Documents produced by the plaintiff Ex.P.1 to 30 were not at all considered. It was bounden duty of the trial court to draw adverse inference against the defendants as they have not let evidence, but still trial court dismissed the suit which has resulted in injustice.

8. In the appeal respondents/defendant No.1 and 2 appeared and contested the case.

9. Along with the appeal IA No.2 is filed by the respondents under Order 41 Rule 23, 23(A) of CPC seeking

to remand the case. IA No.2 is filed by the respondents seeking to remand the case.

10. In the accompanying affidavit it is sworn to the facts that suit was dismissed. Written statement was not filed by the defendants and therefore, it is necessary to remand the case to permit the respondents /defendants to file written statement and to contest the case. Thus opportunity has to be given to file written statement.

11. Objections are not filed by the appellant on IA No.2.

12. IA no.3 is filed by the appellant U/Order 41,Rule 27 of CPC seeking to produce additional documents.. In the accompanying affidavit the appellant has sworn to the facts that the documents now sought to be produced are important documents and those were not produced earlier. Due to over sight they were not produced and those documents were necessary for proper adjudication of the case.

13. Objections are filed by the respondents on IA no.3 contending that the application is not tenable. There was no one who prevented them from filing application earlier. Application is not sustainable. There is no nexus with the

appeal and documents and irrelevant documents are produced.

14. Heard arguments canvassed by both sides and perused trial court records.

15. The following points arise for consideration:

1. Whether the trial court was justified in holding that plaintiff failed to prove his title to the suit schedule property and also his actual possession?

2. Whether the respondents have made out sufficient grounds to remand the case to the trial court for permitting them to file written statement and contest the case?

3. Whether the appellants have made out sufficient grounds to allow IA No.3 filed U/Order 41, Rule 27 of CPC?

4. Whether the impugned judgment and decree is perverse, capricious and cause for interference ? If so, to what extent?

5. What order or direction ?

16. My answers to the above points are as follows:-

Point No.1 : In the affirmative.

Point No. 2 : In the affirmative.

Point No. 3 : In the affirmative.

Point No. 4 : In the negative.

Point No. 5 : As per the final order
for the following:

REASONS

17. **Point No.1 to 4:** These points are taken together for common discussion to avoid repetition for facts and evidence as these points are interrelated. In the trial court the plaintiff Sri.Ajit Kumar got himself examined as PW1 and he reiterated that originally the suit property belonged to his grandfather and thereafter it was entered in the name of Neeminatha and now he has succeeded to the suit property and he is the absolute owner of the suit property. He got marked Ex.P1 to 30.

18. Ex.P.1 is the handwritten RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of Kenchikere Neminathappa S/o Bharamappa Harapanahalli for the year 1968-69 to 1977-78 Ex.P.2 is the handwritten RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of Kenchikere Neminathappa S/o Bharamappa Harapanahalli for the year 1978-79 to 1982-

83 Ex.P.3 is the handwritten RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of Kenchikere Neminathappa S/o Bharamappa Harapanahalli for the year 1983-84 to 1987-88.

19. Ex.P.4 is the handwritten RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, which shows that the name of Kenchikere Neminathappa S/o Bharamappa is rounded off and the name of K.Ajithkumar S/o G.Bharamappa is entered for the year 1988-89 to 1993-94 Ex.P.5 is the handwritten RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 1993-94 to 1998-99. Ex.P.6 is the handwritten RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 1999-2000 to 2001-02

20. Ex.P.7 is the computerized RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2001-02 Ex.P.8 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa

for the year 2002-03 Ex.P.9 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2003-04

21. Ex.P.10 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2004-05 Ex.P.11 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2005-06 Ex.P.12 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2006-07, Ex.P.13 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2007-08.

22. Ex.P.14 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa Harapanahalli for the year 2008-09 Ex.P.15 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2009-10 Ex.P.16 is the

RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2010-11

23. Ex.P.17 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2011-12, Ex.P.18 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2012-13, Ex.P.19 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2013-14

24. Ex.P.20 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2014-15 Ex.P.21 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2015-16 Ex.P.22 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2016-17, Ex.P.23 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village,

standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2017-18.

25. Ex.P.24 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2018-19, Ex.P.25 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2019-20, Ex.P.26 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2020-21, Ex.P.27 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2021-22, Ex.P.28 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2022-23, Ex.P.29 is the RTC extract of Sy.No. 219F measuring 9.69 acres situated at Madlageri village, standing in the name of K.Ajithkumar S/o G.Bharamappa for the year 2023-24 Ex.P.30 is the mutation register extract No.14 which shows the name of K.Ajithkumar S/o G.Bharamappa is mutated in respect of Sy.No. 219/F measuring 9.69 acres and Sy.No. 136B/6 measuring 0.83 acres on the basis of partition.

26. PW1 has not been cross examined even on legal aspects. There is no rebuttal evidence also.

27. The suit is filed for declaration and injunction and all the documents produced by the plaintiff are revenue documents. Though the plaintiff has contended that he got the suit property in the family partition there is no partition deed produced by the plaintiff. Mutation register extract which is produced at Ex.P.30 goes to shows that the name of the plaintiff came to entered in the records of the suit property. In this case no genealogical tree is produced to show relationship of the plaintiff with late Kanchikeri Neminathappa. In the plaint it is contended that the Neminathappa is the uncle of the plaintiff. No genealogical tree is produced to show pedigree of the family tracing from Kanchikere Bharamappa the propositus.

28. In the case since the plaintiff claims right over the suit schedule property on the basis of partition deed and thus being the case the genealogical tree and partition deed are important documents. Further there is no pleading as to on which date month and year there was partition and in what mode partition was effected, oral or written, what were the family property that were divided under the partition and other material particulars. Since, the plaintiff is tracing title from Neminathappa, the other

siblings of Nemitnathappa viz., Bommappa, Chandrakantha, Shakunthalamma and Kamalamma are also necessary parties to the suit. There is no explanation given for not impleading them as parties. The very relationship of the plaintiff with Neminathappa is not established. Therefore, only basing on the revenue documents this suit for declaration cannot be decreed.

29. It is a settled principle of law that revenue documents are not documents of title and revenue documents neither create nor extinguish title over the property. Revenue documents are only to facilitate of payment of revenue to the Government. Hence, the plaintiff failed to prove title to the suit property.

30. No doubt there is no written statement filed by the defendants. But, the suit of the plaintiff cannot be decreed automatically only on the ground that there is no written statement filed by the defendants. Plaintiff having approached the Court has to prove his case independently without backing upon the weakness of the case of the defendants. There is no preponderance of probabilities that oscillates in favour of the plaintiff.

31. IA No.1 is filed by the respondents under Order 41 Rule 23, 23(A) of CPC seeking to remand the case on

the ground that they had not filed written statement and that an opportunity is to be given for the defendants. Objections are not filed by the appellant on IA No.2.

32. IA no.3 is filed by the appellant U/Order 41,Rule 27 of CPC seeking to produce additional documents. It is contended that the documents sought to be produced are important documents and those were not produced earlier due to over sight and these documents are necessary for proper adjudication of the case.

33. IA no.3 is objected by the respondents on the main ground that there is no nexus with the appeal and documents and irrelevant documents are produced.

34. By way of IA no 2 the respondents wants an order of remand to permit them to file written statement and to lead evidence. If there was written statement filed then the defence of the defendants would be disclosed and after cross examination of witnesses and defence evidence there may be shifting of the probabiliites. Further, it is trite to note that written statement was not filed and defendants had no opportunity to put for their defence Since there was no defence and no probabilities in favor of the plaintiff, the trial court rightly came to the conclusion that the plaintiff failed to prove the case and rightly

dismissed the suit of the plaintiff based on available records.

35. As already observed there is nothing wrong in the orders passed by the trial court. Since the judgment is passed only on the evidence of the plaintiff it is as good as an *ex parte* decree.

36. In this regard it is beneficial to rely on the judgment of Honble Karnataka High Court in the case of *Smt. Ansari Sakeenabi vs Maligi Moideensab And Others* reported in AIR 1997 Kant 339, ILR 1997 KAR 1909 wherein it was observed in paragraph no 8: -

“8. No doubt, the plaintiff's suit was contested by defendant at its earlier stages and till the plaintiff's evidence was recorded, but he failed to appear on the subsequent dates of hearing and remained absent, of course for valid reason, when the suit was set down for his evidence. Then the suit was decreed by the trial court on the basis of plaintiff's evidence only. It is not the case that defendant remained absent in the suit after any portion of his evidence was recorded in which event alone the trial court could have disposed of the suit treating him as present as envisaged by Explanation to Rule 2 of Order 17, C.P.C. Read in the context of this Explanation, sub-clause (b) of Rule 3 of Order 17, C.P.C. makes the legal position clear that when a party to the suit remains absent without leading any evidence, the trial court is enjoined by Rule 2. Order 17 to proceed to dispose of the suit in one of the modes stipulated in Order 9, C.P.C. As a necessary legal corollary it follows that any decree passed by the trial Court disposing of the suit on the basis of plaintiff's

evidence only due to non-appearance of contesting defendant at subsequent stages in the suit and on his failure to lead his evidence, is an ex parte decree against him and not a decree on merits. In view of this emerging legal position the decree in the instant case has to be treated as an ex parte decree and not as decree passed on merits. Therefore, the application under Order 9, Rule 13, C.P.C. made by the petitioner before the trial court in Mis. Case No. 4/89 seeking to set aside the decree inquest in was maintainable in law; and the trial court as well as the lower appellate court have clearly erred in taking the contrary view and passing the impugned orders dismissing the said application. As such, the revision is entitled to succeed.

37. Thus the impugned judgment is as good as an ex parte judgment . Further, on perusal of the order sheet of the trial court, it is apparent that there was no irregularity committed by the trial court. But the defendants / respondents intends to file written statement and lead evidence and has sought for an opportunity. Even the appellant plaintiff intends to produce and mark additional documents.

38. Under the IA No.3 five documents are produced by the appellant which is the certified copy of plaint in O.S.No.42/2018, certified copy of the amended plaint, certified copy of the written statement, certified copy of the reply to the counter claim and certified copy of the compromise petition filed in O.S.No.42/2018 which filed on

11.02.2023. These documents if considered may be of relevance to prove the case of the plaintiff.

39. Since these documents were not produced earlier and as there was no written statement and no evidence was let by the defendant, in the trial court then, those aspects could not have been discussed or considered by the trial court.

40. If opportunity to lead evidence and contest the case is granted then no prejudice will be caused to the plaintiff and the case would be decided fully and finally. Thus, this is a fit case where this court and can exercise its discretionary power under Order 41 Rule 25 of C.P.C. and remand the case to the trial court for fresh consideration of the case on hand.

41. It is apparent from records that the trial court has passed decree relying on the documents produced by the plaintiff. It is trite to note that it is burden on the plaintiff to prove the case as it is he who knocks the door of the court. The weakness of defendants is not trump card for the plaintiffs and there can be no automatic decree of the suit. There is a duty on the court also to verify authenticity of the documents produced and to properly appreciate the evidence on record. In view of observations, it is apparent that the ground of appeal raised is

acceptable to interfere with the impugned judgment and decree. Thus point no 1 to 3 answered in the affirmative

42. **Point No.4:** Due to findings on point no 1 to 3 supra, this case has to be remanded for fresh trial to accord an opportunity to plaintiff as well as defendants to lead evidence. Thus this court is of the considered view that this is a fit case to invoke order 41 rule 23 and 25 and refer the matter to trial court to permit parties to lead additional evidence to reconsider the case afresh after giving opportunity to the defendant to file written statement and lead evidence. No doubt there would be further delay, but the case would be decided fully and finally at once. Delay is only a matter of time. Both parties are permitted to lead fresh evidence on the case.

43. As already discussed , it is apparent that based on the documents available, decree of the suit by the trial court was justified and cannot be found fault with. But, since this appellate court is exercising its power with respect to under order 41 Rule 23 and 25 though the Judgment and decree is not perverse, an opportunity has to be given for retrial of the case after permitting evidence afresh. Thus observing, this point no 4 is answered in the negative accordingly.

44. **Point No. 5:** Due to the findings and reasons assigned supra, I proceed to pass the following:

O R D E R

The appeal filed by the appellant / plaintiff under Order 41 Rule 1 of C.P.C, is hereby allowed.

Consequently, the Judgment and Decree passed by the trial court in O.S.No.196/2023 dated 27.06.2025 is hereby set aside.

IA no 2 filed by the respondents under Order 41 Rule 23, 23(A) of CPC hereby allowed.

IA No.3 filed U/Order 41 Rule 27 of CPC by the appellants is allowed.

The case is remanded for fresh trial to the trial court as per order 41 rule 25 to accord an opportunity to both parties to let fresh evidence.

Both parties shall appear before the trial court on 28th day of April 2026 without further notice.

Draw decree accordingly.

Retransmit TCR with a copy of this judgment to the trial court.

(Dictated to the Stenographer, transcribed and computerized by her, revised, corrected and then pronounced in the open court on this the 1st day of April 2026)

(Smt Usharani.R)
Senior Civil Judge and JMFC.,
Harapanahalli