

KAVP210000132011



Presented on : 08-11-2011
Registered on : 08-11-2011
Decided on : 07-07-2026
Duration : 14 years, 7 months, 29 days

**IN THE COURT OF
PRL.CIVIL JUDGE AND JMFC, BASAVANA BAGEWADI
AT BASAVANA BAGEVADI, VIJAYAPURA**

Dated this the 7th Day of July, 2026

Presided Over by

Sri. Ameet Ghatti, B.A., L.L.B
Prl. Civil Judge and JMFC.,
Basavana Bagewadi.

O.S.No.495/2011

PLAINTIFFS:

1. Sangappa S/o Tippanna Jiddimani (Dead),
Since deceased through his L.Rs.
- 1A. Sarika W/o Anil Hundekar,
Age: 37 years, Occ: Household Work,
R/o House No.278/11, Near T.M.C.,
Housing Colony, Sankeshwar,
Tq: Hukkeri, Dist: Belagavi-591313.
- 1B. Ashwini D/o Sangappa Jiddimani,
Age: 29 years, Occ: Household Work,
R/o Ward No.1, Main Road,
Ronihal, Tq: Basavana Bagewadi,
Dist: Vijayapura-586210.
- 1C. Shilpa W/o Yamanappa Biradar,
Age: 28 years, Occ: Household Work,
R/o Ward No.1, Main Road, Bhaganagar,
Hanumapur, Tq: Basavana Bagewadi,
Dist: Vijayapura-586210.

1D. Kavita D/o Sangappa Jiddimani,
Age: 27 years, Occ: Household Work,
R/o Ward No.1, Main Road,
Ronihal, Tq: Basavana Bagewadi,
Dist: Vijayapura-586210.

1E. Amit S/o Sangappa Jiddimani,
Age: 26 years, Occ: Agriculture,
R/o Ward No.1, Main Road,
Ronihal, Tq: Basavana Bagewadi,
Dist: Vijayapura-586210.

-Vs-

DEFENDANTS:

1. Bangarewwa Co. Tippanna Jiddimani,
Since deceased through her L.Rs.

1A. Balabai W/o Eknath Hundekar,
Age: 60 years, Occ: Household Work,
R/o Sankeshwar, Tq: Hukkeri,
Dist: Belagavi.

1B. Laxmibai @ Gourawwa W/o Digambari
Garasangi,
Age: 52 years, Occ: Household Work,
R/o Ronihal, Tq: Basavana Bagewadi,
Dist: Vijayapura.

1C. Shivakka W/o Sindur Hundekar,
Age: 46 years, Occ: Household Work,
R/o Malaghan, Tq: Basavana Bagewadi,
Dist: Vijayapura.

1D. Akkawwa W/o Digambari Garasangi,
Age: 42 years, Occ: Household Work,
R/o Ronihal, Tq: Basavana Bagewadi,
Now at Ronihal.

2. Gopal S/o Ekanath Hundekar,
Age: 42 years, Occ: Private Photographer,
R/o Sankeshwar, Tq: Hukkeri,
Dist: Belagavi.

 Advocate for Plaintiffs: **Sri. S.V.Jahagirdar Advocate/
 Sri. N.S.Kulkarni, Advocate.**

Advocate for D.1(a) & (b): **Sri. A.G.Nandi, Advocate.**

Defendant No.1(c) : **Suit is dismissed for default.**

Advocate for Defendant No.2: **Sri. N.S.Mamadapur, Advocate.**

Date of institution of the suit : 08.11.2011

Nature of the suit : Declaration & Permanent
Injunction.

Date of commencement of recording: 03.10.2017
of evidence

Date on which the Judgment was
Pronounced : 07.07.2026

Total duration	:	Year/s	Month/s	Day/s
		-14-	-07-	-29-

JUDGMENT

This is suit filed by the plaintiffs against the defendants for the relief of declaration to declare that, the plaintiffs are the absolute owners of suit schedule property and for the relief of permanent injunction restraining the defendants from interfering over the suit schedule property of the plaintiff. In the alternative if the Court comes to the conclusion that, the plaintiffs are not in possession, directed the defendants to hand over the possession to the plaintiff and for the relief of declaration

that, Diary No.407 and 425 are not binding on the plaintiffs.

2 Suit Schedule Property is as under:

Land bearing Sy.No.14/1 measuring 5-acres situated at Chikkagarasangi Village.

3 NOTE: O.S.No.495/2011 is clubbed with O.S.No.281/2012, 359/2012 and 499/2013. O.S.No.359/2012 and O.S.No.499/2013 are de-clubbed and dismissed as per Order dated 05.08.2021 in O.S.No.359/2012. On 12.09.2025 O.S.No.281/2012 is dismissed as not pressed. In O.S.No.495/2011 stage is reached for finality.

4 Brief facts of the plaintiffs' case: It is the case of the plaintiffs that, the propositus Tippanna had wife by name Bangarewwa. Out of their wedlock the plaintiff was born. The plaintiff had wife by name Indrabai and defendant No.2 is the brother of Indrabai and propositus died about 20 years back. Further stated that, the plaintiff is in possession of the suit schedule property. The propositus has purchased the property bearing Sy.No.14 measuring

7-acres 7-guntas for consideration amount of Rs.1,000/- from Huchchappa Tammanna Karigar. Further stated that, the property bearing Sy.No.14 is joint family property of plaintiff and defendant No.1 and during life time of Tippanna, the said property is Joint Family Property. Further stated that, the plaintiff is an illiterate. Taking advantage of the illiterate, the defendant No.2 has taken signature stating that, he has obtained loan from the Bank in Sy.No.14 measuring 7-acres 7-guntas and transferred 5-acres of land in his name. Further stated that, the defendant No.2 has created documents as defendant No.1 has relinquished her share in favour of defendant No.2. Further stated that, the defendant No.1 has no right to partition the property. As such the Diary entered in the name of defendant No.1 is not binding upon the plaintiff. The defendant No.1 has no right over the property. In order to grab the property, the defendant No.2 has created document. The defendant No.1 never relinquished her property in favour of defendant No.2 under Diary No.435. Hence, prays to decree the suit.

- 5 After filing of the suit, the defendants appeared through their respective Counsels. The defendant No.1 has not filed written statement. Hence, written statement of defendant No.1 is taken as not filed. The defendant No.2 has filed written statement. The defendant No.1 reported as dead. Hence, L.Rs., of defendant No.1 are brought on record as defendant No.1(A) to 1(D). But, suit against the defendant No.1(C) is dismissed for default as per Order dated 25.07.2018.
- 6 In the written statement, the defendant No.2 has denied each and every contention of the plaintiff. Further contending that, the entire land bearing Sy.No.14 is purchased by Tippanna S/o Sangappa Jiddimani on 28.09.1968 for consideration amount of Rs.1,000/- from one Huchappa S/o Timmanna Karigar. The said property is self-acquired property of Tippanna. During his life time, he is having every right to enjoy the suit land as per own wish and will. Tippanna is having love towards his wife and hence, he has relinquished 5-acres of land which is suit land to his wife orally and as per said oral relinquishment M.E.No.407 came to be certified in the

revenue records. As per M.E.No.407 the defendant No.1 has become absolute owner and in possession of the suit schedule property. The defendant No.1 is having love and affection towards defendant No.2, who is none else, grandson i.e. daughter's son of defendant No.1. Thus, the defendant No.1 relinquished the suit land in favour of defendant No.2 orally and same is recorded under M.E.No.425. The defendant No.2 is absolute owner of the suit land. Further stated that, the defendant No.2 is in peaceful possession and enjoyment of the suit land. At the time of Certification of M.E.No.425, the defendant No.2 is minor and mother of defendant No.2 is shown as minor guardian to him. Since from Certification the defendant No.2 is in peaceful possession and enjoyment of the suit land as owner. Further contending that, the defendant No.2 obtained loan from Syndicate Bank, Ronihal and he plaintiff and his sisters and defendant No.1 have given consent letter to the Bank stating that, they have no objection to raise the loan from the said Bank and in the said consent letter, they have clearly stated that, the defendant No.2 is absolute owner of suit land. The Advocate for the plaintiff has given a legal opinion that,

the defendant No.2 is the absolute owner of the suit land. Thus, the plaintiff and defendant No.1 and other sisters of plaintiff are having full knowledge regarding M.E.No.407 and 425 since from the beginning. M.E.No.425 certified in the year 1975 and suit is filed in the year 2011. Hence, suit is hopelessly barred by limitation as per the Article 58 of the said Act. This suit is barred by limitation, hence, liable to be dismissed. The name of the defendant No.2 is entered in the record of rights on 04.04.1975 under M.E.No.425. On the same date the defendant No.2 came into peaceful possession and enjoyment of the suit land. The said M.E. number is well within the knowledge of plaintiff, defendant No.1 and other sisters of the plaintiff. The possession of the plaintiff over the suit land is peaceful, continuous and hostile and adverse to the rights of the real owners. The defendant No.2 has perfected his title to the suit land by way of adverse possession. Thus, the suit is liable to be dismissed.

- 7** On the basis of these rival contentions the following Issues have been framed:

RECASTED ISSUES

1. Whether the plaintiffs prove that, he is absolute owner and in peaceful possession over the suit schedule property as on the date of filing of the suit ?
2. Whether the plaintiffs prove the alleged interference by the defendants ?
3. Whether the defendant No.2 proves that, he is title and possession over the suit schedule property ?
4. Whether the defendant No.2 proves his adverse possession over the suit schedule property ?
5. Whether suit of the plaintiff is barred by law of limitation ?
6. Whether plaintiff is entitled for the relief as sought for ?

8 In order to prove their case, the plaintiff No.1 i.e. defendant in O.S.No.359/2012 got himself examined as D.W.1 and got marked Ex.D-1 to Ex.D-4 in O.S.No.359/2012. He also examined three witnesses as D.Ws.2 to 4 in his favour in O.S.No.359/2012 and closed his side.

- 9 In order to disprove the contention of the plaintiffs, defendant No.2 i.e. plaintiff in O.S.No.359/2012 himself examined as P.W.1 and got marked Ex.P-1 to Ex.P-30 in O.S.No.359/2012. P.A. Holder of plaintiff in O.S.No.281/2012 examined as P.W.2 and got marked Ex.P-31 to Ex.P-39 and closed their side. Further, during cross-examination D.W.1 in O.S.No.359/2012 admitted the Sale Deed. Hence, same is marked at Ex.P-40 in O.S.No.359/2012.
- 10 Heard arguments of Counsel for plaintiffs and Counsel for defendants. Perused materials on records.
- 11 My answer to the above said issues are as under:
- Issue No.1** : Partly in the Affirmative,
 - Issue No.2** : In the Negative,
 - Issue No.3** : Partly in the Affirmative,
 - Issue No.4** : In the Negative,
 - Issue No.5** : In the Negative,
 - Issue No.6** : Partly in the Affirmative & as per final order for the following;

REASONS

- 12 **ISSUE No.1 AND 3**:- These issues are interconnected with each other, hence to avoid repetition of facts they are taken up together for common discussion.

- 13** In order to prove the contention of the plaintiffs, the present plaintiff No.1 i.e. defendant in O.S.No.359/2012 examined himself as D.W.1 and filed affidavit in lieu of his examination-in-chief by reiterating the contents of plaint averments in the present suit. Since the plaint averments already narrated in the above Paragraph of this Judgment, same is not required for reproduction.
- 14** In support of his contentions, he has produced Ex.D-1 to Ex.D-4. Ex.D 1 and 2 are the RTC Extracts, Ex.D-3 and Ex.D-4 are the Mutation Extracts.
- 15** In support of his contention, he has examined three more witnesses as D.Ws.2 to 4 in O.S.No.359/2012. They have filed affidavit in lieu of their examination-in-chief.
- 16** In order to disprove the contention of the present plaintiffs, the defendant No.2 i.e. plaintiff in O.S.No.359/2012 himself examined as P.W.1 by filing affidavit in lieu of examination in chief reiterating the contents of written statement averments in O.S.No.495/2011. Since the contents of written statement

averments already narrated in the above Paragraph of this Judgment, same is not required for reproduction.

- 17** In support of his contention, he has produced Ex.P.1 to Ex.P.30 in O.S.No.359/2012. Ex.P-1 to Ex.P-6 are the Mutation Extracts, Ex.P-7 to Ex.P-28 are RTC Extracts, Ex.P-29 is the Death Certificate, Ex.P-30 is the Legal Opinion and closed his side.
- 18** P.A. Holder of plaintiff in O.S.No.281/2012 examined as P.W.2 and he has filed his affidavit in lieu of his examination-in-chief. He also got marked Ex.P-31 to Ex.P-39. But he has not tendered for cross examination hence chief of P.W.2 is discarded. Further, during cross-examination D.W.1 in O.S.No.359/2012 admitted the Sale Deed. Hence, same is marked at Ex.P-40 in O.S.No.359/2012.
- 19** As per Section 101 of Indian Evidence Act, ***Burden of proof.*** — *Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.*

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

- 20** The burden is on the plaintiffs to prove that, they are the absolute owners and in peaceful possession of suit schedule property as on the date of filing of the suit and defendants are interfering with the suit schedule property. On the other hand defendant No 2 proves that he is absolute owner and in possession of the suit schedule property. Further proves that, he has perfected his title by way of adverse possession.
- 21** In order to prove the case of the present plaintiffs, the plaintiff No.1 i.e. defendant in O.S.No.359/2012 has filed affidavit in lieu of his examination-in-chief wherein he has stated that, the suit schedule property originally belongs to Tippanna, who has purchased the property from Huchchappa Tammanna Karigar for consideration amount of Rs.1,000/-. The said fact is not disputed by the defendant in their written statement. Further plaintiff has produced Ex.P-40 Sale Deed. The said document clearly established that suit schedule property self acquired property of Tippanna.

22 Further stated that, the plaintiff and defendant No.1 are cultivating the land during life time of father of plaintiff. Further stated that, after death of Tippanna, the plaintiff and his mother are the absolute owners of the suit schedule property. Further stated that, the defendant No.2 taking disadvantage of relationship has taken loan from the Bank over the suit schedule property. Further stated that, the defendant No.2 has created documents as Vatani Patra and Diary No.407. Thereafter, the defendant No.2 got obtained relinquishment deed from the defendant No.1. The said relinquishment is forged one. As such, he is the absolute owner of the suit schedule property.

23 In order to prove this contention, the plaintiff has produced Ex.D-1-RTC Extract wherein the name of the defendant No.2 is appeared. He produced Ex.D.2-RTC Extract wherein the names of the plaintiff and Bangarevva Tippanna Jiddimani are appeared. He has produced Ex.D-3-Mutation Extract dated 17.04.1993 wherein Tippanna has transferred the suit schedule property measuring 5-acres by way of partition in favour of his wife. A wife

cannot herself demand a partition, but if a partition does take place between her husband and his son, she is entitled for share from her husband. A transfer of land of the value of rupees one hundred or upwards by a husband to his wife enjoyed by her during her lifetime in discharge of future maintenance is not a transfer of property. In the chief examination Defendant No 2 himself has stated that Tippanna has given suit schedule to his wife for her maintenance. Hence, it cannot be considered that there is a partition between Tippanna and Bangarewwa. Hence said document cannot be considered as partition. Hence said document is inadmissible in evidence. Further plaintiff has produced Ex.D-4 dated 01.03.1975 Bangarevva Tippanna Jiddimani has relinquished her share in favour of defendant No.2 and Balabai is appointed as minor guardian of defendant No.2. The said document is unregistered document.

- 24** In the decision reported in **2019(2) KCCR 1115 (DB)** between **Siddanagouda Natural and Others Vs. Smt. Kashibai @ Kantamma and Others.**

B. EVIDENCE ACT, 1872-Section 110-Document of title-It is a well settled law that no title can be

conferred on the basis of the revenue records. 'Varadi' is not a document evidencing the transfer of immovable property, it is trite to be legal must be in accordance with the Provisions of Transfer of Property Act, 1882. In the absence of registered document of transfer of immovable property, varadi per se cannot be construed as transfer of immovable property, the nature of the varadi, the identity of the persons who gave the report and recorded are relevant material particulars and in the absence of the same, no credential value can be given to such entries.

- 25** The above decision is very much applicable to this case. In the present case the defendant is relied on the mutation document. Hence, said document is inadmissible document.
- 26** The Counsel for the present defendant No.2 cross-examined present plaintiff No.1 i.e. D.W.1 in O.S.No.359/2012. During cross-examination, he has admitted that, his father has purchased the property from Huchchappa S/o Tammanna Karigar in the year 1967. Further admitted that, at the time of purchasing the property, he is minor. Further admitted that, the said property is self-acquired property of his father. Further

admitted that, he has not impleaded his sisters as party in this suit. Further admitted that, in the year 1990 his father died. The admission of D.W.1 clearly established that, the suit schedule property is self-acquired property of Tippanna and he is the absolute owner of suit schedule property. Further suggested that, Diary is entered about 22 years back. Further stated that, he does not know the age of Gopal in the year 1973. Further, he has admitted that, in the year 2007 he and his mother have signed the document to obtain loan. Further stated that, he does not know the possession of the defendant No.2. Further admitted that, he has not challenged the Diary No.407 and 425. Further admitted that, Sy.No.14 is standing in his name. Mere admission of D.W 1 will not prove that defendant no 2 is the owner of the property.

- 27** In support of his contention, he has examined three witnesses as D.Ws.2 to 4. They have filed affidavit in lieu of their examination-in-chief wherein they have stated that, the suit property is the ancestral property of Tippanna. Further they stated that during the lime time of Tippanna there was no transfer of property. The plaintiff

and defendant No.1 are the legal heirs of Tippanna. Further stated that, after death of Tippanna, the plaintiff is in possession of the property. Further contending that, in order to grab the property, the defendant No.2 had obtained signature of the plaintiff and entered his name in the Diary.

28 The Counsel for the defendant No.2 cross-examined D.Ws.2 to 4. During cross-examination D.W.2 has admitted that, 5-acres of land is standing in the name of Gopal and remaining 2-acres 7-guntas of land is standing in the name of Sangappa. Further admitted that, about 20 years back he came to know that, Gopal has entered his name in respect of suit land. The admission of DW2 will not prove that defendant No 2 is the owner of the property.

29 During cross-examination, D.W.3 admitted that, Balabai is the sister of plaintiff and Indirabai is the daughter of Balabai and Indrabai is the wife of Sangappa and defendant No.2 is brother of Indirabai and son of Balabai. Further admitted that, in the year 2011 he came to know that, the name of Gopal is entered in the record of rights.

The evidence of D.W.3 will not prove that defendant No 2 is absolute owner of the suit schedule property.

30 During cross-examination, D.W.4 has admitted that, Gopal has obtained loan from the syndicate Bank and he is surety to the loan. Further admitted that he does not know about death of Tippanna. The evidence of D.W.4 will not prove that the defendant No 2 is the absolute owner of suit schedule property.

31 In order to disprove the case of the plaintiff, the present defendant No.2 i.e. plaintiff in O.S.No.359/2012 himself examined as P.W.1 in O.S.No.359/2012 and filed affidavit in lieu of examination-in-chief by reiterating the contents of written statement.

32 The Counsel for the present plaintiff cross-examined P.W.1 in O.S.No.359/2012. During cross-examination he has stated that, Tippanna during his life time has relinquished the property in favour of his grandmother, in turn in the year 1975 she has relinquished the property in his favour. Further admitted that, he has not produced relinquishment deed but mutation entered in his name.

33 Further admitted that, he has not received any notice and he has not produced any notice copy for change of Khata in his name. Further admitted that, he has not enquired in the Tahsildar Office with regard to change of Khata in his name. The defendant No.2 has not produced any document to show that, Tippanna has executed the Registered Relinquishment Deed in favour of his grandmother, in turn she has executed the Registered Relinquishment Deed in his favour. Further in order to prove his contention defendant No.2 has not examined any witness to prove that Tippanna has orally relinquished his property in favor of his wife and in turn she has orally relinquished her property in favour of defendant No.2. Hence, in the absence of oral and documentary evidence, the defendant No.2 has failed to prove that, he is the absolute owner of the suit schedule property. Only on the basis of mutation entry, it cannot be said that, he is the absolute owner of the suit schedule property. Counsel for defendant cited the decision reported in Civil Appeal No.5401 of 2025 between Angadi Chandranna V/s Shankar and others. I have read over the principle

explained in the above decision. With due respect the above decision is not applicable to this case. In the present case there is no partition in the family. Hence, above decision is not applicable to this case.

- 34** Further it is contention of the defendant that Defendant No.2 has obtained the loan from the Bank and plaintiff and his sisters and defendant No.1 have given no objection to raise the loan from bank and in the consent letter they have stated that defendant No.2 is owner of the property. On perusal of the Ex.P-30 is the legal opinion. The legal opinion given the penal advocate will not prove that defendant No.2 is the absolute owner of the suit schedule property. Further, defendant No.2 has not produced the consent letter issued by the plaintiff and his sisters. Hence, in view of the above discussion, the plaintiffs No.1(a) to 1(e) prove that, L.Rs., of Tippanna are the absolute owners of the suit schedule property. On the other hand, the defendant No.2 failed to prove that, he is title over the suit schedule property. Further. it is contention of plaintiff that he is in possession of the suit schedule property. On the other hand, defendant No.2

contending that he is in possession of the suit schedule property. Counsel for defendant has cross examined to DW-1. During the cross examination, he has admitted that he does not know whether the defendant No.2 is in possession of the property. The evidence of DW-1, clearly established that plaintiff is not in possession of the suit schedule property. Hence, for these reason, I answer Issue No.1 and 3 **Partly in the Affirmative.**

35 **ISSUE No.2:-** It is alleged by the plaintiff that, the defendants interfered with the suit schedule property. As already discussed in the above Paragraph of this Judgment, the plaintiff proves that, he is owner of suit schedule property. D.W.1 during his cross-examination has admitted that, the defendant No.2 has obtained the signature. Further admitted that, he does not know defendant No.2 is in possession of the property. The admission of the D.W.1 clearly established that, he is not in possession of the property. Hence, question of alleged interference by the defendant No 2 does not arise. Hence, I answer Issue No.2 in the **Negative.**

36 **ISSUE No.4:-** It is the contention of the defendant No.2 that, the name of defendant No.2 is entered the record of rights on 04.04.1975 and on the date the M.E.No.425 is came to be certified. On the same day the defendant No.2 came into peaceful possession and enjoyment of the suit land. Further contending that, the possession of the defendant No.2 over the suit land since from 04.04.1975 is well within knowledge of plaintiff, the defendant No.1 and other sisters of plaintiff including the whole word. The possession of defendant over the suit land is peaceful, continuous and hostile and adverse to the rights of the real owners. Hence, the defendant No.2 has perfected his title to suit land by way of adverse possession. Hence, prays to dismiss the suit.

37 On the other hand, the Counsel for the plaintiff argued that, the plaintiff has filed the suit for declaration, injunction and alternative possession. Further contending that, the defendant behind the back of plaintiff illegally entered his name in the mutation. Further contending that, the defendant has not produced any documents to show that, the plaintiff's father has relinquished the

property in favour of his wife, in turn she has executed relinquishment deed in favour of defendant No.2. Hence, the contention of the defendant cannot be accepted.

- 38** In the decision reported in ***ILR 2009 KAR 1099*** in between ***Basavantrao Since deceased by his L.Rs., Vs. Rajkumar*** wherein the Hon'ble Court held that, CPC 1908–Section 96–Relief of declaration that the plaintiff has perfected his title by adverse possession–Grant of–Judgment and Decree–Appealed against–Plea of adverse possession–Proof of ingredients to be established– **HELD**, a party claiming adverse possession must prove that, his possession is *nic vi, nec clam, nec precario*” that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that the possession is adverse to the true owner. Therefore, a person who claim adverse possession should have show (a) on what date he came into possession, (b) what was a nature of possession, (c) whether factum of possession was known to other party, (d) how long his possession has continued and (e) his possession was open and undisturbed. It is only proof of all these ingredients

the case of adverse possession is said to have be established. A person pleading adverse possession is no equities in his favour, since he is trying to defeat the right of the true owner, it is for him to clarify clearly plead and established all facts necessary to establish his adverse possession. Further held, unfortunately, the learned Trial Judge has not kept in mind settled principles and proceeded on the footing that, in 1972 the plaintiff's grandfather was put in possession and the plaintiff was assisting his grandfather in cultivating the property and he is in continuous possession from 1972 till the suit is 1992 for 20 years and therefore, the plaintiff has perfected his titled by adverse possession. The said finding is contrary to material on record. The Judgment and Decree passed in Trial Court cannot be sustained. Accordingly, it is liable to be set aside.

- 39** In the present case, the defendant in his written statement is claiming that, Tippanna is love towards his wife and hence he has relinquished 5-acres of land to his wife orally and as per oral relinquishment, she has orally relinquished the same in favour of defendant No.2 and he

is the absolute owner of the suit land. The defendant is claiming possession of property as owner of property by virtue of relinquishment deed. The defendant No.2 had denied the title of plaintiff. It cannot be starting point of adverse possession at all. Hence, the contention of the defendant No.2 cannot be accepted. Hence, the adverse possession does not arise. Hence, without going to much discussion, I am of the opinion that, the defendant No.2 failed to prove his title by way of adverse possession over the suit schedule property. Hence, I answer Issue No.4 in the **Negative**.

40 ISSUE No.5:- It is the contention of the defendant No.2 that, he is in peaceful possession and enjoyment of the suit schedule property. At the time of mutation, he is minor and his mother is shown as minor guardian. Further contending that, he has obtained loan from the Bank and the plaintiffs submitted no objection to said Bank and the defendant No.2 is the absolute owner of suit land. The Advocate for the plaintiff has given a legal opinion that, the defendant No.2 is the absolute owner of the suit land. The plaintiff and defendant No.1 and other

sisters of plaintiff are having full knowledge regarding M.E.No.407 and 425 from the year 1975 and suit is filed in the year 2011. Hence, the suit is barred by limitation.

41 On the other hand, the Counsel for the plaintiff argued that, mutation is entered behind the back of the plaintiff. The father of the plaintiff never executed relinquishment deed. Further contended that, the mother of the plaintiff has no right over the suit property. Further contended that, the defendant No.2 has not produced any documents to show that, the mother of the plaintiffs has relinquished her property. Hence, prays to reject the contentions of the defendant No.2.

42 On perusal of record, the plaintiff has filed the suit for declaration to declare that, he is the absolute owner of the suit schedule property and permanent injunction restraining the defendants from interfering with the suit property and alternative relief for possession.

43 As per Article 58 of the Limitation Act, to obtain any other declaration limitation period is 3 years when the

right to sue first accrues. The suit for declaration of title and recovery of possession Article 65 is attracted.

44 In the present case, the plaintiff has filed the suit for declaration to declare that, he is absolute owner of suit schedule property by virtue of succession. It is contention of the defendant that, the father of the plaintiff father has executed the oral relinquishment deed in favour of his wife, in turn she has executed the relinquishment deed in his favour. On perusal of the records, the said documents are unregistered documents. Further on perusal of the Ex.P-2 is mutation extract dated 17-04-1973 mutation is entered by virtue of partition.

45 With regard to the limitation is concerned, the plaintiff has sought for the relief of alternative possession aiding with relief of declaration and in that regard lesser relief of declaration merges with the relief of possession. The Hon'ble Supreme Court of India reported in **(2019) 7 SCC 76** in between **Sopanrao and Another Vs. Syed Mehamood** and Others wherein the Hon'ble Court held that, "The main prayer made in the suit concerned clearly indicate that, it is suit not only for declaration but also

prayed for possession of the suit land. The limitation for filing the suit for possession on the basis of the title is 12 years and therefore, the suit is with limitation.”

- 46** Insofar as the relief of possession is concerned, Article 65 will be applicable as the plaintiff claimed possession by virtue of title. In the said Article the suit for possession and only limitation period is prescribed for claiming adverse possession by the defendants. In the decision reported in **(2009) 5 KCCR 3457** in between **B. Koosappa Vs. P. Veerappa @ Koosappa** wherein the Hon’ble Court held that, “Limitation Act 1963 (36 of 1963) – Article 65–Suit for possession of immovable property or any interest therein based on title–Period of limitation–Time from which begins to run.

HELD:

Article 65 would show that there is no limitation for suit for possession of immovable property based on title. If the defendant’s possession is not adverse to the plaintiff. If the possession is adverse, the period of limitation is 12 years and the limitation starts from the time when the defendant’s possession becomes adverse to the plaintiff and not from the date of dispossession of the plaintiff as in Article 64”.

- 47** In view of the above decision, it is clear that, there is no limitation for period to claim the possession from the encroacher or trespasser and it is only for the time criteria under Article 65 of the Limitation Act, for the claim of adverse possession by the defendant.
- 48** The Counsel for the defendant cited the decision reported in ***Khatari Hotel Private Limited Vs. Union of India, (2011) 9 SCC 126*** wherein the Hon'ble Court held that, "While enacting Article 58 of the 1963 Act the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "First" has been used between the words "Sue" and "Accrued". This would be mean that, if a suit is based on multiple causes of action, the period of limitation will began to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued. With due respect the above decision is not applicable to this case. Counsel for the plaintiff cited decision reported in ***Daya***

Singh and Another Vs. Gurdev Singh (Dead) By L.Rs. And Others in 2010 SCC (2) 194, wherein Hon'ble Court held that "Limitation Act, 1963—Article 58—Limitation—Declaratory suit and appeal dismissed by Courts below on the ground of limitation—Suit was reportedly filed after eighteen years of alleged compromise between the parties—Cause of action for the purpose Article 58 accrues only when right asserted in suit is infringed or there is at least a clear and unequivocal threat to infringe that right—Mere existence of an adverse entry into revenue record cannot give rise to cause of action—Right to sue accrued when there was clear and unequivocal threat to infringe that right by defendants when they refused to admit claim of appellants, only seven days before filing of the suit—Suit was filed within three years from date of infringement—Suit not barred by limitation—Impugned judgment set aside—Appeal allowed".

- 49** The above decision is very much applicable to this case. In the present case plaintiff has state that defendant has denied the title on 27-10-2011 hence cause of action arose on 27-10-2011. Further During cross examination

he has stated that after having knowledge about the mutation he has filed the suit. From the date of knowledge plaintiff has filed the suit within limitation. Further in the present case the plaintiff has sought for the relief of declaration, injunction and alternative possession. Hence, Article 65 is applicable to this case. Hence, there is no limitation for filing the suit. Accordingly, I answer Issue No.5 in the **Negative**.

50 ISSUE No.6:- As already discussed in the above Paragraphs of this Judgment, the plaintiff proves that, Tippanna was the absolute owner of the suit schedule property and after his death, his legal heirs are the absolute owners of the suit schedule property. The plaintiff fails to prove that, he is the absolute owner of the suit schedule property. As per Section 8 of the Hindu Succession act, the L.Rs., of Tippanna are the absolute owner of the suit schedule property. Hence, as per Order VII Rule 7 of CPC, the plaintiff and L.Rs., of Tippanna are the owners of the property. As per Section 8 of the Hindu Succession Act, the plaintiff and defendant No.1(a) to 1(d) are the owners of the property. In the present case

plaintiff has included all the properties hence share cannot be allotted. Hence, I answer Issue No.6 **Partly in the Affirmative** and on the basis of above findings on Issues No.1 to 6, I proceed to pass the following:

ORDER

The suit of the plaintiffs is hereby partly decreed with cost.

The L.Rs., of Tippanna i.e., L.Rs of Plaintiff and Defendants No 1A to 1D are the absolute owner of the suit schedule property.

It is ordered and decreed that Defendant No.2 is hereby directed to hand over the possession of suit schedule property to the L.Rs of Tippanna within 3 months from the date of this Judgment. If the defendant No.2 failed to deliver the possession of suit schedule property within stipulated time then L.Rs of Tippanna are at liberty to get the possession of the suit schedule property through due process of law.

Draw decree accordingly.

(Part of the Judgment is dictated to the Stenographer, transcribed and computerized by him and remaining part of the Judgment is dictated to him on computer directly, then print out taken by him and then corrected and pronounced by me in open Court on this 7th day of July, 2026).

(Ameet Ghatti)
Prl. Civil Judge & JMFC,
Basavana Bagewadi.

ANNEXURE**List of Witnesses examined for the Plaintiff (Defendant in O.S.No.359/2012):**

- D.W.1 : Sangappa S/o Tippanna Jiddimani, R/o Ronihal.
D.W.2 : Aminappa S/o Bhimappa Teggi, R/o Ronihal.
D.W.3 : Nagappa S/o Hanamant Bati, R/o Ronihal.
D.W.4 : Venkataray S/o Ganapati Salunke, R/o Ronihal.

List of Documents exhibited for the Plaintiff (Defendant in O.S.No.359/2012):

- Ex.D-1 & 2 : RTC Extracts.
Ex.D-3 & 4 : C.C. of Mutation Extracts.

List of Witnesses examined on behalf of Defendants (Plaintiff in O.S.No.359/2012):

- P.W.1 : Gopal S/o Ekanath Hundekar, R/o Ronihal.
P.W.2 : Anil S/o Ekanath Hundekar, R/o Sankeshwar,
GPA holder of plaintiff in O.S.No.281/2012.

List of Documents marked on behalf of Defendants (Plaintiff in O.S.No.359/2012):

- Ex.P-1 to 6 : Mutation Extracts.
Ex.P-7 to 28 : RTC Extracts.
Ex.P.29 : Death Extract.
Ex.P- 30 : Legal Opinion.
Ex.P-31 & 32 : RTC Extracts.
Ex.P-33 : Property Extract.
Ex.P-34 : General Power of Attorney.
Ex.P-35 & 36 : C.C. of Mutation Extracts.
Ex.P-37 & 38 : C.C. of RTC Extracts.
Ex.P-39 : C.C. of Mutation Extract.
Ex.P-40 : Sale Deed.

(Ameet Ghatti)
Prl. Civil Judge & JMFC,
Basavana Bagewadi.