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VIKAS
DALAWAI

JUDGMENT
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VIKAS DALAWAI
Location: ADDL.C.J.&
JMFC, INDI
Date: 2026.06.22
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Presented on : 01-02-2016
Registered on : 01-02-2016
Decided on : 09.06.2026
Duration: 10 Yrs., 04 months 08 days.

IN THE COURT OF THE I ADDL. CIVIL JUDGE AND JMFC, INDI.

-PRESENT-

SHREE. VIKAS DALAWAI
B.A., LL.B.
I Additional Civil Judge & JMFC, Indi.

Dated this the 9th Day of June, 2026

Original Suit No.44/2016

PLAINTIFF/S

1. **Shri. Bhimu S/o. Sevu Pawar**
   Age: 47 Yrs., Occ: Agril.,
   R/o. Indi, Tq: Indi, Dist: Vijayapur.

   (Sri. Y.S.P Adv)

V/S

DEFENDANT/S:

1. **The Chief Secretary Government of Karnataka,**
   R/by Deputy Commissioner, Vijayapur.
2. **The Assistant Commissioner, Indi.**
3. **Shri. Sevu S/o. Tuluju Pawar,**
   Age: 72 Yrs., Occ: Agril.,
   R/o. Indi, Dist: Vijayapur.
   (D-1 & 2 the Ld. AGP)
   (D-3 Exparte)

Date of institution of the suit	01.02.2016
Nature of the suit	Declaration & Consequential Relief of Permanent Injunction
Date of commencement of recording of the evidence	15.06.2023

Date of pronouncing the Judgment	09.06.2026
Duration of the suit	Year/s Month/s Day/s 10 04 08

(VIKAS DALAWAI)
I Addl.Civil Judge and J.M.F.C.,
Indi.

J U D G M E N T

The plaintiff has filed this suit seeking the relief of declaration and consequential relief of permanent injunction.

2. The brief facts of the plaintiff's case are as follows:

The plaintiff is the natural son of defendant No.3. It is alleged that defendant No.3 executed a gift-deed in favour of defendant No.2 in respect of land bearing Sy.No.504/2 measuring 05 guntas out of the total extent of 03 acres 20 guntas. On the strength of the said gift deed, defendant No.2 claims to have become the owner of the suit property. The plaintiff further stated that defendant No.3 had not voluntarily executed the said gift deed and that the family members of defendant No.2 managed to get the document executed for certain ulterior reasons. Therefore, the alleged gift-deed is not binding upon the plaintiff. The defendant No.1 is the supervising authority over defendant No.2 and has therefore been impleaded as a formal party to the suit. The plaintiff further stated that the alleged gift deed is not binding upon him as the same was not validly executed by defendant No.3. The defendants are attempting to interfere with the plaintiff's peaceful possession and enjoyment of the suit property measuring 05 guntas in Sy.No.504/2 situated at Indi and are causing obstruction and disturbance. Hence, the plaintiff has sought the relief of declaration that the gift-deed allegedly executed by defendant No.3 in favour of defendant No.2 in respect of 05 guntas of land in Sy.No.504/2 out of the total extent of 03 acres 20 guntas is not binding upon him and has also sought the consequential relief of permanent injunction.

3. After service of summons, defendant No.1 and 2 appeared through their counsel. Despite service of summons, defendant No.3 failed to appear before the Court and was placed exparte.

4. The defendant No.1 and 2 filed their written statement denying the plaint averments. They contended that defendant No.3 had executed a registered gift-deed in favour of defendant No.2 in respect of 05 guntas of land bearing Sy.No.504/2. On the basis of the said gift-deed, the defendant No.2 became the lawful owner of the suit property. The defendants further contended that the alleged gift-deed was obtained with an intention to cause loss to the plaintiff or defendant No.3 is false. They also denied the allegation that defendant No.3 dug a bore-well in the suit property. The defendants further contended that on 17.10.1997 the defendant No.3 executed a registered gift-deed in favour of defendant No.2, namely the Chairman of Karnataka Rajya Ashraya Yojana, in respect of 05 guntas situated on the northern side of land bearing Sy.No.504/1B/2. Subsequently, after phodi, the said land came to be assigned Sy.No.504/2.

5. It is further contended that after execution of the gift-deed, the defendant No.2 has been in lawful possession and enjoyment of the suit property. The mutation has also been effected vide M.E. No.4086. It is further stated that the suit property has been utilized for providing sites to Tanda residents under the Ashraya Scheme. The defendants further contend that the plaintiff has filed a false and frivolous suit. They further contended that the plaintiff has not issued the mandatory notice under Section 80 of the CPC before filing the suit and that there is no cause of action for the present suit. Hence, the defendants pray for dismissal of the suit with costs.

6. On rival contention of the parties, my predecessor has framed the following:

ISSUES

1. **Whether the plaintiff proves that, his title over the suit schedule property?**
2. **Whether the plaintiff proves that he is in lawful possession of the suit schedule property?**
3. **Whether the plaintiff proves the alleged interference from the defendants?**
4. **Whether the plaintiff proves that gift deed dtd: 17.10.1997 executed by the defendant No.3 in favour of defendant No.2 is void ab-intio and not binding on him?**
5. **Whether the suit filed by the plaintiff is barred by law of limitation?**
6. **Whether the plaintiff is entitled for the relief as sought for?**
7. **What order or decree?**

7. In order to prove the above said issues, the plaintiff himself examined before this Court as PW-1 and has furnished 3 documents as per Ex.P.1 to P.3 and closed his side evidence. On the other hand, the Learned AGP submits that he has no defence evidence, hence evidence of defendants taken as nil on 23.02.2026.

8. Heard arguments and perused the available materials on record.

9. 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	**:: In the Negative**
Issue No.5	**:: In the Affirmative**
Issue No.6	**:: In the Negative**
Issue No.7	**:: As per final order,**
	for the following:

REASONS

10. Issue No.1: The burden of proving this issue is on the plaintiff to establish his title. In order to prove the same, the plaintiff examined himself as a PW-1 and has produced documentary evidence which are marked as Ex.P.1 to P.3. Ex.P.1 is the RTC Extract pertaining to the Sy.No.504/2. On perusal of Ex.P.1 it discloses that, the property stands in the name of the government represented by the Assistant Commissioner. The plaintiff has not produced any title deed, grant order, partition deed or any other documents to show that, he has acquired title over the suit property. Ex.P.2 is the ME No.4087 and Ex.P.3 is the registered gift deed executed which clearly discloses that, the defendant No.3 had executed gift deed in favour of defendant No.2 on 17.10.1997. The plaintiff has not produced any convincing materials to show that, he has title over the suit schedule property.

11. On perusal of the cross-examination of PW-1 he has admitted that, the suit property is standing in the name of Government. Therefore, this court is of the opinion that, the plaintiff has failed to prove his title over the suit property. Accordingly, I answer issue No.1 in the **Negative**.

12. Issue No.2:- The burden of proving this issues is lies upon the plaintiff. Though the PW-1 has asserted in his cross-examination that; he is in possession of the suit property, his cross-examination reveals otherwise. On perusal of the cross-examination of

PW1 he deposed that; **"ದಾವಾ ಆಸ್ತಿ ಉಪನೊಂದಣಾಧಿಕಾರಿಗಳು, ಇಂಡಿ ಇವರ ಹೆಸರಿನಲ್ಲಿ ಇರುತ್ತದೆ ಎಂದರೆ ಸರಿ, 1997 ನೇ ಇಸ್ವಿಯಿಂದ ದಾನ ಪತ್ರ ಪಡೆದಾಗಿನಿಂದ ಇಲ್ಲಿಯವರೆಗೂ ದಾವಾ ಜಮೀನು ಉಪನೊಂದಣಾಧಿಕಾರಿಗಳು, ಇಂಡಿ ಇವರ ಹೆಸರಿನಲ್ಲಿ ಮತ್ತು ಕಬ್ಜೆಯಲ್ಲಿ ಇರುತ್ತದೆ ಎಂದರೆ ಸರಿ"**

13. PW-2 has specifically admitted that, the defendant No.2 Government is in possession of the suit property. Such an admission goes to the root of the plaintiff's case.

14. Further, Ex.P-1 is the RTC Extract which stands in the name of the Government, represented by the Assistant Commissioner. No documents such as tax paid receipts, cultivation records or any other materials have been produced by the plaintiff to establish his possession over the suit property. An admission made by the party during the cross-examination is the best evidence against him. Therefore, the mere admission of PW.1, the plaintiff is not in possession of the suit property. Accordingly, the plaintiff has failed to prove that he is in lawful possession and enjoyment of the suit schedule property as on the date of the suit. Hence, I answer the issue No.2 in the **Negative**.

15. **<u>Issue No.3</u>**:- The plaintiff has sought the relief of permanent injunction. On the allegation that, the defendants are interfering with his possession and enjoyment of the suit property. However, as discussed under point No.2, the plaintiff has failed to establish his possession over the suit property. On the contrary, the PW-1 has admitted that, the defendant No.2 government is in possession of suit property. When the plaintiff himself admitted that, he is not in possession, the question of interference with his possession does not arise. Therefore, the plaintiff has failed to prove the alleged interference by the defendant. Hence, I answer point No.3 in the **Negative**.

16. **<u>Issue No.4</u>**:- The burden of proving this issues is lies entirely upon the plaintiff. The plaintiff has sought a declaration that the gift deed dtd: 17.10.1997, executed by the defendant No.3 in favour of defendant No.2 is void ab-intio and not binding upon him.

17. At the outset it is pertaining to note that, Ex.P.3 is a registered gift deed. U/s.122 of Transfer of Property Act- 1882, a gift is transfer of certain existing movable or immovable property made voluntarily and without consideration by one person called the donar to the another called the donee and executed by or on behalf of the donee. Further, U/Section 123 of the Transfer of Property Act, a gift of immovable property can be effected only by registered instrument, signed by donar or on behalf of the donar and attested by atleast 2 witnesses.

18. In the present case, Ex.P.3 is a registered gift deed executed by defendant No.3 in favour of defendant No.2. The plaintiff has not disputed the existence of the document. His contention is that, the defendant No.3 had not voluntarily executed the gift deed and that it was obtained for certain ulterior reasons. However, except making such allegations, the plaintiff has not produced any evidence to establish fraud, cohersion, undue influence, misrepresentation or impersonation in the execution of Ex.P.3.

19. It is settled principle of law that a registered document carries a presumption regarding due execution. The burden lies upon the person who challenges the documents to prove the circumstances which render it invalid. Mere allegation are not sufficient to invalidity a registered document.

20. In the present case, the defendant No.3 is the expectant of Ex.P.3 has not challeged the gift deed at any point of time. Even according to the plaintiff, the gift deed was executed on 17.10.1997. The defendant No.3 remained silent for several years and never initiated any proceedings for cancellation of the gift deed. This conduct creates a strong circumstances supporting the genuineness of transaction.

21. Further, Ex.P.2 ME No.4087 discloses that, the revenue entries were mutated on the basis of gift deed. Ex.P.1 RTC extract also shows that, the property stands in the name of the government, represented by Assistant Commissioner. During cross-examination of PW.1 he has admitted that the gift deed was executed about 20 years prior to the filing of the suit. He has further admitted that, from the year 1997 on-wards, the property has been standing in the name of the Assistant Commissioner and that the defendant No.2 government is in possession of the suit property. These admissions clearly establishes that, the gift-deed was acted or immediately after its execution and that consequential revenue entries were effected long ago. The plaintiff has not challenged the mutation proceedings in order to prove any material to show that, the gift-deed was fabricated or illegally obtained. Moreover, the plaintiff is not the executant of the gift deed. The executant is defendant No.3. Unless the plaintiff establishes an independent illegal rights in the suit property and proves that, document adversely affects such right. He cannot merely seek a declaration that gift deed is void on the basis of bald allegations. The evidence on record does not disclose in the circumstances showing that Ex.P.3 is void ab-intio. A document can be declared ab-intio only when it is shown to be non establish in the eye of law due to fraud, forgery, want of validity or any other legal infirmity. No such evidence is in the present case. Therefore, this court is of the considered opinion that, the plaintiff has failed to discharge the burden cast upon him to prove that the registered gift-deed dtd: 17.10.1997 executed by the defendant No.3 in favour of defendant No.2 is void ab-intio or not binding upon him. Hence, I answer Issue No.4 in the **Negative**.

22. Issue No.5:- The defendants have specifically contended that, the suit filed by the plaintiff is barred by limitation that the defendant No.1 & 2 have not adduced oral evidence, the question of limitation can be decided on the basis of pleadings, documents produced by the plaintiff and the admissions made by the PW.1.

23. In the present case, the plaintiff has sought a declaration that, the registered gift deed dtd: 17.10.1997 executed by defendant No.3 in favour of defendant No.2 is void and not binding upon him. Ex.P.3 clearly clearly discloses that, gift-deed was executed on 17.10.1997. Ex.P.2 ME No.4087 further shows that, mutation was effected on the basis of said gift-deed.

24. During his cross-examination, PW-1 has categorically admitted that, the gift-deed was executed about 20 years prior to the filing of the suit. He has further admitted that, since 1997, the property has been standing in the name of Assistant Commissioner and that the defendant No.2 -government is in possession of the suit property. These admissions clearly establish that the plaintiff has knowledge of the gift deed and its consequences for several years before the institution of the suit.

25. As per Article-58 of the Limitation Act-1963, a suit seeking a declaration as to be filed within 3 years from the date when the right to sue first occures the expression “right to sue” means the date on which the plaintiff becomes entitle to seek the relief claimed. In the present case, the gift-deed was executed on 17.10.1997 and mutation was also effected in pursuant to the said gift-deed. Therefore, the cause of action if any arose long back.

26. The plaintiff has not pleaded or proved any specific date on which he came to know about the gift-deed. No explanation what so ever has been offered for approach the court after nearly 2 decades. In the absence of any satisfactory explanation for such enormous delay, the suit cannot be entertained.

27. It is a settled principles of law that, when a party seeks to challenge a registered document, after lapse of time, the burden lies upon such party to explain the delay and establish that the suit is within the prescribed period of limitation. The plaintiff has failed to discharge such burden, therefore, this court is of the considered opinion that, the suit filed in the year 2016, challenging the gift-deed dtd: 17.10.1997 is barred by limitation. Accordingly, the issue No.5 is answered in the **Affirmative.**

28. **Issues No.6**: The plaintiff has sought for the relief of declaration that the gift deed dtd: 17.10.1997 executed by the defendant No.3 in favour of defendant No.2 is void abinitio and not binding upon him and is also sought consequential relief of permanent injunction.

29. While discussing point No.1 to 5 this court has already held that, the plaintiff has failed to prove his title over the suit schedule property. The plaintiff has also failed to establish that, he was in lawful possession and enjoyment of the suit property as on the date of suit. On the contrary, PW-2 has admitted in his cross-examination that, the defendant No.2 is government is in possession of the suit property.

30. Further, the plaintiff has failed to prove the alleged interference by the defendant. He has also failed to establish that the registered gift deed dtd: 17.10.1997 is void ab-initio or not binding upon him. The evidence on record clearly discloses that, the gift deed was acted upon and consequentially mutation entry were effected long back. Moreover, this court has held under point No.5 that the suit is barred by limitation. When the suit itself is barred by limitation, the plaintiff is not entitled to any discretionary or equitable relief from the court. The relief of permanent injunction can be granted only when the plaintiff proves his lawful possession and the alleged interference by the defendant. In the present case, the plaintiff has failed to satisfy these essential requirements. Therefore, in view of the findings recorded on issue No.1 to 5, this court is of considered opinion that, the plaintiff is not entitled to the relief of declaration or consequential relief of permanent injunction as sought in the plaint. Hence, I answer issue No.6 in the **Negative**.

31. **Issue No.7**:- In view of findings on the above issues, reasons and discussions, I proceed to pass the following;

O R D E R

The suit filed by the plaintiff is hereby dismissed with costs.

Draw decree accordingly.

(Dictated to the Stenographer directly on computer, Computerized by her, corrected and then pronounced by me in Open Court, on this the **9th day of June-2026)**

(VIKAS DALAWAI)
I Addl. Civil Judge and J.M.F.C.,
Indi.

A N N E X U R E

List of witnesses examined on behalf of Plaintiff/s:

P.W-1 : Bhimu S/o. Sevu Pawar.

List of documents exhibited on behalf of Plaintiff/s:

Ex.P. 1 : RTC Extract
Ex.P. 2 : ME.No.4087
Ex.P. 3. : Gift Deed.

List of witnesses examined on behalf of Defendant/s:

Nil

List of documents exhibited on behalf of Defendant/s:

Nil

VIKAS DALAWAI

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(VIKAS DALAWAI)

I Addl. Civil Judge and J.M.F.C., Indi.