

KAYG210018252024



**IN THE COURT OF THE SENIOR CIVIL JUDGE  
& JMFC., SHAHAPUR.**

Present: **Smt.Hema Pastapur**,B.A., LL.B.

**SENIOR CIVIL JUDGE & JMFC., SHAHAPUR.  
R.A.No.51/2024**

**Dated this 06<sup>th</sup> day of April -2026**

**Appellant/  
Plaintiff:-**

Shantamma W/o Ramanna  
Gudimani, Age: 50 years, Occ:  
Household, R/o Filter Bed, Ward  
No.1, Shahapur, Tq: Shahapur,  
Dist:Yadgir.

**(By Sri.T.N., Advocate)**

**Versus**

**Respondents/  
Defendants:-**

1. Mallikarjun S/o Ramanna Pujari,  
Age: 57 years, Occ: Social Service,  
R/o Beeranur village, Tq: Shahapur,  
Dist: Yadgir.
2. Manamma W/o Honnappa, Age: 50  
years, Occ: Household, R/o  
Beeranoor village, Tq: Shahapur,  
Dist: Yadgir.
3. Shrishail S/o Durgappa Chinchodi,  
Age: 52 years, Occ: Agri, R/o  
Beeranoor village, Tq: Shahapur,  
Dist: Yadgir.
4. Bhimaraya S/o Hayyalappa, Age: 55  
years, Occ: Social Service, R/o

Diggibase, Talwar Oni, Shahapur,  
Tq: Shahapur, Dist: Yadgir.

**(By Sri.R.N.D., Advocate)**

Date and Nature of decree Appealed : Judgment and Decree passed in O.S.No.343/2019 Dated: 20.09.2024 by the Prl. Civil Judge and JMFC, Shahapur.

Date of institution of Appeal	:	06.11.2024		
Date of Disposal	:	06.04.2026		
Total Duration		Year/s	Month/s	Day/s
		01	05	00

### **J U D G M E N T**

That, the Appellant – Plaintiff in O.S.No.34/2019 on the file of the Prl, Civil Judge and JMFC, Shahapur, has preferred this Appeal under Order XLI Rule 1 R/W Section 96 of the Code of Civil Procedure, against the impugned Judgment dated: 20.09.2024. That, the respondents are the defendants therein. That, for the sake of convenience, parties in this Appeal the are referred by their ranks as assigned in the trial Court.

#### **Suit property is as under:-**

House No.50 measuring 20 X 30  
situated at Ward No.1, filter Bed

Badavane, Shahapur, bounded by:-

East : 06 meter road

West : House No.89

North : House No.51

South : House No.49

**Facts of the case projected by the plaintiff are as under :-**

1. That, one deceased Shri. Ramappa S/o Rachappa was the husband of the plaintiff. That, on 09.07.1999 the CMC, Shahapur, had allotted the suit property to the said Ramappa under Vasati Yojana. That, the said Ramappa died on 11.01.2007. That, after the death of said Ramappa, the plaintiff has become the owner and possessor of the suit property.
2. That, the defendants through, no where concerned to the suit property but, are interfering in the peaceful possession and enjoyment of the plaintiff over suit property. Hence, the plaintiff has knocked the doors of justice.
3. That, on suit summons being served, the defendants No.1 to 4 have appeared before the trial

Court through their learned counsel. That, the defendants No.2 to 4 have not submitted their written statement.

4. That, the defendant No.1 has submitted his written statement, wherein he denied all the contentions of the plaintiffs and has pleaded that the CMC, Shahapur, had allotted the suit property to one Smt. Bheembai- wife of the defendant No.1 and from the date of said allotment she is in possession and enjoyment of the same. Hence, the question of interference by the defendants as alleged by the plaintiff does not arise at all. That, the defendant No.1 in view of his aforesaid contentions has prayed for dismissing the suit with cost and compensatory cost of Rs.10,000/-.

5. That, on the basis of the pleadings of both the parties, the following issues were struck:-

1. Whether the plaintiff proves that, she is in lawful possession of the suit

property ?

2. Whether the plaintiff proves the alleged interference over the suit property ?
3. Whether the plaintiff is entitled for the relief sought for ?
4. What order or decree ?

6. That, the plaintiff to substantiate her said contentions has deposed herself as PW-1 and got marked the documents at Exs.P1 and 2 and closed her side.

That, the defendant No.1 to probabalise his aforesaid contentions has deposed himself as DW-1 and got marked the documents at Exs.D1 to 16. That, the defendant No.1 to strengthen his said contentions has got examined one Shri. Devindrappa S/o Mareppa as DW-2 and closed his side.

7. That, the learned trial Court considering the materials placed on record, on 20.09.2024 has

dismissed the suit. That, feeling aggrieved with the said Judgment and Decree the plaintiff has preferred this Appeal on the following grounds that:-

- i. the Judgment and Decree under appeal is erroneous both on facts and law and also against the presumption of law.
- ii. it is the case of the plaintiff that, previously her husband was the owner and possessor of the suit property and after his death she became the owner and possessor of the said property. That, the plaintiff to probablise her side contentions has got marked the documents at Ex.P1 Hakku Patra and Ex.P2 certified copy of Judgment and Decree passed in O.S.No.23/2002. That, the trial Court has failed to appreciate the said fact while deciding the issue No1.
- iii. the trial Court has failed to appreciate the Judgment and Decree passed in Ex.P2. That, the CMC, Shahapur, has not challenged the Ex.P2 and the same has become final and conclusive.

That, the trial Court has failed to take into consideration the said facts while deciding the issues No.1 to 3.

- iv. the trial Court while dealing with the issues No.1 to 3 has not taken into consideration the Judgment and Decree passed in O.S.No.23/2002, wherein the Court has held that the suit of the plaintiff is maintainable without seeking the relief of declaration.
- v. the Court in O.S.No. 23/2002 had held that the Hakku patra issued infavour of the husband of the plaintiff in respect of the suit property is genuine. Hence, any subsequent Hakku Patra or document not hold good in the eye of the law. That, the trial court has failed to appreciate the said facts while deciding the issues No.1 to 3.
- vi. the trial Court has not properly understood the provisions the Specific Relief Act, much less regarding the principles of Injunction. Hence,

the alleged Judgment and Decree is liable to be set aside.

8. That, in this Appeal the defendants have appeared through their learned counsel. That, the TCR has secured.

9. That, I have heard the arguments and perused the materials placed on record. That, the following points arise for My consideration and determination :-

1. Whether the Judgment and Decree passed by the trial Court is perverse and requires interference of this Court ?

2. What order or decree ?

10. That, on careful re-evaluation of the materials placed on record, My answer to the aforesaid points are as under:-

Point No.1 :- In the **AFFIRMATIVE**.

Point No.2 :- As per the final order for the following :-

### **REASONS**

11. **Point No.1:-** It is specific case of the plaintiff that, on 09.07.1999 the CMC, Shahapur, had allotted

the suit property to her said husband and after his death she has become the absolute owner and possessor of the said property. That, the plaintiff to demonstrate her aforesaid contentions has mainly relied upon the Exs.P1 and 2. That, the Ex.P1 is the Hakku Patra issued by the CMC, Shahapur, to the said Ramappa S/o Rachappa- husband of the plaintiff dated:- 09.07.1999. That, the Ex.P2 is the certified copy of Judgment and Decree passed by the Civil Judge Shahapur, in O.S.No. 23/2002 dated:- 30.08.2003. That, from the said document it appears that the husband of the plaintiff had instituted the said suit against the Chief officer Town Municipal Council, Shahapur, for the relief of perpetual injunction in respect of the suit property. That, said Court had decreed the said suit and held that the plaintiff therein i.e, said Ramappa is in possession of the suit property and directed the defendant therein i.e, CMC, Shahapur, not to dispossess him from the

suit property and not to interfere in his peaceful possession over the said property.

12. That, the defendant No.1 has pleaded that the CMC, Shahapur, had allotted the suit property to his wife Bheembai and from the date of said allotment she is in possession and enjoyment of the said property. That, the defendant No.1 has placed his reliance on the Exs.D1 to 16. That, the Ex.D1 is the Hakku patra. That, from the contents of said document it appears that the CMC, Shahapur, had allotted the said property to the wife of defendant No.1- Bheembai, dated:- 25.01.2001. That, the Ex.D2 is the certified copy of Assessment list of buildings and lands for the relevant year 1997, wherein the name of the said Bheembai has been shown as the owner of the suit property. That, the Ex.D3 is the Endorsement issued by the CMC, Shahapur, dated:- 08.01.2024, wherein the said authority had certified that the said property had been allotted to the said Bheembai and the same was entered in page No.08 .09 of the allotment register.

That, the Exs.D4 and 5 are the Namune-3, wherein the name of the said Bheembai has been shown as the owner of the suit property. That, the Exs.D6 to 15 are the Tax paid receipts. That, from the said documents it appears that the said Bheembai uses to pay the tax in respect of the suit property. That, the Ex.D16 is the Letter addressed by the said Bheembai to the CMC, Shahapur, dated:- 16.01.2024, wherein she had requested the said authority for giving opinion in respect of issuance of Ex.P1 and Ex.D1- Hakku Patra.

13. That, the DW-2 has filed his chief affidavit supporting the case of the defendant No.1.

14. That, in this Appeal the defendants have placed their reliance on the following decisions:-

**1. 2015 (2) KCCR SN 153 (SC)**

**Zarif Ahmad (D) through Lrs ad Another  
V/S**

**Mohd. Farooq.**

**Wherein it has held that, A.**

**SPECIFIC RELIEF ACT, 1963- Section**

**38- Permanent injunction- Evidence as to possession- Plaintiff paying house tax for several years- Supported by tax receipts and extracts of Tax Assessment Register- Report of Commissioner that defendants were in possession cannot be relied upon against weight of oral and documentary evidence on record proving possession of plaintiff- Decree cannot be found fault with.**

**2. 2011 (5) KCCR 3791**

**N.Lakshminarasimhaiah (deceased by L.Rs) and Ors.**

**V/S**

**Krishnamurty.**

**Wherein it has held that, SPECIFIC RELIEF ACT, 1963- Section 38- CIVIL PROCEDURE CODE, 908- Order 39, Rule 1- Injunction- The plaintiff filed a**

**suit for injunction against defendant from interfering with the peaceful possession and enjoyment of the suit schedule property. The trial court decreed the suit. The first appellate court allowed the appeal of the defendant. There the present appeal before the High court. The records speak that the entry in the revenue registers is in the name of defendants, the defendant have paid the tax. Therefore the defendants have acquired title to suit property on basis of valid sale deed. The principle that possession follows title would apply. Plaintiff has failed to prove prima facie case. Plaintiff failed to produce any documentary evidence in support of his possession. The court held the relief of injunction cannot be granted.**

**3. 2012 (5) KCCR 4307**

**Veeranna Shantappa Horadi and  
Others**

**V/S**

**Smt. Gouramma Shankmkumar Horadi  
and Another.**

**Wherein it has held that, SPECIFIC  
RELIEF ACT, 1963- Section 39-  
Injunction- Suit for- Gets decided by  
factum of physical possession- If title  
also challenged, it also necessitates  
plaintiffs to seek for a declaration also.**

**4. 2012 (4) KCCR 3179**

**Sri Lakshminarayanawamy Charities,  
Bangalore**

**V/S**

**Commissioner, Bangalore City  
Corporation, Bangalore.**

**Wherein it has held that, SPECIFIC  
RELIEF ACT, 1963- Section 37- Suit for  
injunction- Dismissal of- Legality- Title  
suit relating to subject- matter pending**

**before very same Court- Documents in present suit were also subject- matter of that suit- Hence, trial court declining to deal with title- Confining itself only to question of lawful physical possession- Upon consideration of facts narrated in plaint and evidence, trial Court holding that plaintiff was never in possession- Proper conclusion.**

15. It is pertinent to note here that, as discussed above, the plaintiff is claiming that the CMC, Shahapur, had allotted the suit property to her husband through Ex.P1 and whereas, the defendant No.1 is claiming that the CMC, Shahapur had allotted the suit property to his wife Smt. Bhimabai through Ex.D1. It is pertinent to note here that, the CMC, Shahapur on 09-07-1999 had issued the Ex.P1 infavour of the said Ramappa- husband of the plaintiff ad the Ex.D1 had been issued in favor of the Bheembai

on 25.01.2001. That, the Ex.D1 is the subsequent document. It is significant note here that, the authorities of the CMC, Shahapur, in the Ex.D1 have not made any endorsement that the Ex.P1 had been canceled and have also not endorsed on what basis the suit property had been allotted to the said Bheembai subsequently. It is significant to note here that, the defendants have not examined the said Bheembai to demonstrate how she had acquired the suit property and have also not examined the authorities of the CMC, Shahapur, to ascertain on what basis they have allotted the suit property to the said Bheembai under Ex.D1.

16. It is significant to note here that, the CMC, Shahapur, the defendants and the said Bheembai have not challenged the Judgment and Decree passed in Ex.P2. That, the said Judgment and Decree has reached its finality. That, the present defendants and the said Bheembai though, are not the parties in Ex.P2

but, it has reached its finality and it is binding on all persons.

17. It is pertinent to note here that, the plaintiff in her cross-examination though, has deposed that she do not know who had issued the Ex.P1 in favor of her husband and she and her husband have not paid the tax to the suit property but, as the Judgment and Decree passed in the Ex.P2 has reached finality the said evidence of the plaintiff and Exs.D1 to 11 will not come to the aid of the defendants. That, the plaintiff has proved her case with all preponderance of probabilities. Hence, she is entitled for the relief of permanent injunction. Accordingly, point No.1 is answered in the **AFFIRMATIVE**.

18. **Point No.2:-** That, as discussed on point No.1, I proceed to pass the following :-

**ORDER**

That, the Appeal filed by the Appellant  
- plaintiff under Order Section 96 R/w Under

Order XLI Rule 1 of the Code of Civil Procedure, is hereby allowed with cost.

That, the Judgment and Decree passed by the trial Court in O.S.No.343/2019 dated 20.09.2024 is hereby set-aside.

That, the defendants are hereby restrained by way of perpetual injunction from interfering in peaceful possession and enjoyment of the plaintiff over the suit property.

That, draw the decree accordingly.

That, the office is to re-transmit the trial Court records forthwith along with copy of this order.

(Directly dictated to the stenographer, typed by him, corrected by me and then pronounced in the open Court on this 06<sup>th</sup> day of April- 2026).

**(Hema Pastapur)**  
**Sr. Civil Judge & JMFC,**  
**Shahapur.**