

KAMS500034142022



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : Sri. Kamalaksha D., B.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 3rd day of June 2025

R.A./52/2022

Appellants:

1. Pachegowda
S/o late Doddegowda,
aged about 87 years,
2. Chinnamma W/o Puttegowda,
aged about 75 years,

Both are residing at
Maraluru Village,
Chikkaiahnachathra Hobli,
Nanjangud Taluk.

(By Sri.T.Ganesh Murthy, Adv.)

-V/s-

Respondents

1. Chief Secretary to Government,
Vidhana Soudha,
Bengaluru.

2. Tahasildar,
Nanjangud Taluk,
Nanjangud.
3. Madegowda S/o Chikkamarigowda,
aged about 60 years,
4. Krishna S/o Marigowda,
aged about 40 years,
5. Shillegowda S/o Marigowda,
aged about 35 years- **dead by L.Rs**

respondents 3 to 5 are
residing at Goddanapura Village,
Chikkaiahnachathra Hobli,
Nanjangud Taluk.

- 5(a) Gowramma @ Gowri
W/o late Shillegowda,
aged about 50 years,
- 5(b) Manjula D/o late Shillegowda,
aged about 30 years,
- 5(c) Siddaraju S/o late Shillegowda,
aged about 27 years,
- 5(d) Swamy S/o late Shillegowda,
aged about 30 years,

Residing at Goddanapura Village,
Chikkaiahnachathra Hobli,
Nanjangud Taluk.

5(e) Umesha S/o late Shillegowda,
aged about 50 years,
residing at
Kadakola Village,
Mysuru Taluk.

(By A.G.P. for R.1 & 2
Sri. M.Mahesh, Adv. for R.3 & 4
R.5(a) to (e) - absent)

Date and nature of the appeal	Appeal against the judgment and decree in O.S.No.96/2017 dated 06.08.2022 passed by the II Addl. Civil Judge and J.M.F.C., Nanjangud.		
Date of Institution of the appeal	03.11.2022		
Date of pronouncing the judgment	03.06.2025		
Duration of Appeal	Years	Months	Days
	02	07	00

J U D G M E N T

The plaintiffs are the appellants herein challenging the judgment and decree of O.S.96/2017 passed by the II Addl. Civil Judge and JMFC, Nanjangud, dated 06.08.2022.

2. The parties are referred to as they were before the trial court in suit for the sake of convenience.

3. Brief facts of the case are as follows:

The plaintiffs have filed the suit for the relief of declaration and permanent injunction. The suit schedule property of Sy.No. 432 measures 9 acres 11 guntas is the dry land situated in Goddanapura Village of Nanjangud Taluk. Originally the said property belonged to one Patel Siddegowda S/o Siddegowda and 2nd Chikkasiddegowda S/o Chikkasiddegowda. Subsequently on 02.01.1952 (09.11.1952) the said property was sold under registered sale deed in favour of the 1st plaintiff for valuable consideration amount of Rs.600/-. Thereafter, the plaintiffs filed application before the office of 2nd defendant to change the khatha of the

suit schedule property, thereafter khatha was changed as per R.R.2136 and khatha No.314. It is further submitted that, as per the sale deed 3 acres of property is got mutated in the name of the Pachegowda the 1st plaintiff and Puttegowda the husband of the 2nd plaintiff and their name was got entered in the column Nos.9 and 12 of R.T.C. On the basis of mutation entry, the plaintiffs are in peaceful possession and enjoyment of the suit schedule property. It is further submitted that, Puttegowda died on 06.07.2007 by leaving his wife 2nd plaintiff as his legal heir. Rajanna, Shivamma, Mahadevamma, Puttamadi, Mahadeva are the children of 2nd plaintiff. The plaintiffs are in absolute possession and they are the owners of the schedule property from the date of its purchase. They are paying tax regularly. The R.T.Cs. are continued in the

name of the 1st plaintiff and the husband of the 2nd plaintiff. Recently the plaintiffs went to office of the defendant No.2 to enquire about the separate possession certificate regarding 3 acres of land and to get enter the khatha of the suit schedule property into their names after the death of original purchaser. The defendant No.2 did not get enter the names of the plaintiffs. After verification of the R.T.Cs., they came to know that in the R.T.Cs. they have not mentioned the extent and name of the plaintiffs. The plaintiffs have purchased the suit schedule property in the year 1952 itself. Therefore, the possession was continued after the death of original purchaser. The 2nd defendant on the basis of wrong information without verifying the original documents has not entered the extent of 3 acres in the name of the

plaintiffs. Hence, the plaintiffs gave a representation to the 2nd defendant stating that their names should be recorded as per the sale deed. The defendant No.2 has issued an endorsement dated 16.10.2015 explaining that there is no way to make corrections due to non requirement of supporting documents. Thereafter the plaintiffs issued notice under Section 80 C.P.C. to the defendants No.1 and 2 on 03.11.2016, but till date the defendants have not taken any action. By taking advantage of the mistake of the defendants No.1 and 2, the defendants No.3 to 5 started to interfere with the peaceful possession of the of the plaintiffs over the suit schedule properties and also denied the ownership of the plaintiffs over the suit schedule property. Hence, the plaintiffs filed this suit.

4. In pursuance of suit summons, the defendants No. 1 and 2 though appeared before the court through their counsel have not filed written statement. Defendants No.3 to 5 filed common written statement. In the written statement they denied the averments of the plaint. They further explained that the total extension of 9 acres 11 guntas is there in the suit schedule property. Out of the said extension, 3 acres 11 guntas was purchased by 3rd defendant on 01.06.1972 from one Doddamma D/o Madamma and others. On 30.11.1949 the father of the defendants No.3 to 5 i.e., Chikkamarigowda @ Marigowda purchased 3 acres of land from the children of Patel Siddegowda of Maraluru Village. In all, the property of 6 acres 11 guntas is belonged to these defendants. Thereafter 8 guntas land of the defendants was acquired for Varuna Channel, remaining property is in the possession of the 3rd defendant. The plaintiffs are not in possession and they are not absolute owners of

the suit schedule property. Hence, prayed to dismiss the suit with costs.

5. On the basis of the above rival pleadings, the trial Court has framed the following issues:

1. Whether plaintiff proves that he is the absolute owner and in possession of the suit schedule property?
2. Whether plaintiff proves that he is entitled for mandatory injunction against the defendant No.2?
3. Whether plaintiff is entitled for reliefs sought for?
4. What order or decree?

6. Before the trial Court, in order to get the relief the plaintiffs No.1 and 2 are examined as P.Ws.1 and 2 and got marked 56 documents as Exs.P.1 to 56. The defendants have not tendered evidence on their behalf.

7. The Trial Court on merits dismissed the suit of the plaintiffs. Then the plaintiffs being aggrieved

litigants approached before this court by filing appeal on the following grounds:

According to the appellants/plaintiffs the judgment and decree of the Trial Court passed in O.S.96/2017 dated 06.08.2022 is not in accordance with the law. The Trial Court has utterly failed to consider the evidence in proper manner. The Trial Court has not properly evaluated the evidence of both oral and documentary in proper way. The appellants are having sufficient grounds to show the error of the Trial Court judgment. Hence, pray to allow the appeal and set aside the judgment of the Trial Court.

8. After service of notice, the respondents No.1 and 2 appeared before the court through A.G.P., respondents No.3 to 5 have appeared before the court through their counsel. During the pendency of the appeal respondent No.5 reported to be dead and his L.Rs. came on record, but they remained absent.

9. Trial Court Records are received.

10. During the pendency of the appeal, the appellants have filed I.A.IV under Order XLI Rule 27 of C.P.C. prays to permit them to produce the additional documents to adjudicate the matter before the court.

11. Heard. Perused the pleadings, evidence and materials placed on record.

12. In view of the grounds urged by the appellant, the points that arise for consideration are:

1. Whether the appellants/plaintiffs proves that the Trial Court has not properly evaluated or considered the oral and documentary evidence?
2. Whether the plaintiffs made out ground for interference of the judgment of the Trial Court?
3. Whether the appellants prove that the matter is to be remanded for the purpose of additional evidence as prayed in I.A.IV under Order 41 Rule 27 C.P.C.?
4. What order?

13. The findings on the above points are as follows:-

Points No.1 & 2: In the negative

Point No.3 : In the negative

Point No.4 : As per the final order
for the following:-

REASONS

14. **Points No.1 to 3:** These points are taken together for common discussion to avoid repetition. As mentioned above, the suit is filed for the relief of declaration to declare that the plaintiffs are the absolute owners of the suit schedule property and followed with the relief of permanent injunction in respect of the schedule property bearing Sy.No.432 measures 9 acres 11 guntas in Goddanapura (Maraluru) Village of Nanjangud Taluk. It is the ground for appeal of the appellants that, the Trial Court did not consider the oral and documentary evidence of the appellants in proper manner. It is worth to take note of documents produced by the

appellants/plaintiffs. Ex.P.1 is the certified copy of sale deed dated 02.01.1952 (09.01.1952). I have gone through the recitals of the said document. The said Ex.P.1 shows that, on 09.01.1952 the sons of Chikkasiddegowda i.e., Patel Siddegowda and Chikkasiddegowda have sold the property in favour of the sons of Doddegowda i.e., Pachegowda and Puttegowda. But the Trial Court has noted that, the appellants/plaintiffs have not provided reason for non-production of original of Ex.P.1 document.

15. Section 62 of Indian Evidence Act mandates to produce original documents before the court for its inspection that process is called as production of primary document. Secondary evidence of the contents of private documents is admissible only if the original document is not in existence or not available. It is usually necessary to account for the absence of the original and for this purpose, proof of primary evidence is not available may be required. But here in this

case, original sale deed should have been produced before the court of law as per the provision to comply the production of original document, that is called primary evidence. But the plaintiffs/appellants did not produce original sale deed for the reason best known to them. Suppose one party failed to produce original document before the court of law, then he has to explain the reason for non-production of original document. Then the production of secondary document may be permitted. Secondary evidence can be accepted by the Court for the existence, condition or contents of a document if the original has been lost or destroyed.

16. In this regard, the decision reported in **AIR 1979 SC 1567 “Aher Rama Gova vs. State of Gujarat”** may be relied upon. The loss of original must be proved. In this regard, the decision reported in **[(1962) 1 SCR 827]** in the case of **State of Bihar vs. Karam Chand Thapar** may be relied upon.

Secondary evidence can be accepted by the Court for the existence, condition or contents of a document; 1) when the original appears to be possession or power of the person against whom the document is to be in the possession or power of the person against whom the document is sought to be proved, or of a person not subject to the power of the Court or of any person legally bound to produce it, who has not it despite being given the required statutory notice; 2) when the party offering such evidence cannot, though no default or neglect of his own, produce the original in reasonable time. (relevant decision – AIR 1975 SC 1748 “Ashok Dulichand vs. Madhavlal Dube”); 3)when the original document is not easily movable, 4)when the original document comprises numerous accounts or other documents which cannot be conveniently examined in Court etc.

17. The above referred judgments of the Hon’ble Apex Court clear that production of original document before the court of law is very mandatory on the part of the plaintiffs for inspection of the court. Secondary evidence may be furnished if sufficient reasons are

given. But as rightly observed by the Trial Court the appellants/ plaintiffs produced Ex.P.1 certified copy of sale deed without any proper and valid reasons. The learned counsel for the plaintiffs would argue that production of Ex.P.1 may enough to draw favourable inference in favour of the plaintiffs, because it is having term of 30 or more than 30 years. But mere tenure of document 30 or more than 30 years may not be a sole reason to believe one document to be a valid document. Secondary document can be accepted by the court, if reason for loss or destroy of document is satisfactorily explained to the court. So, Ex.P.1 cannot be considered as valid document. Exs.P.2 to 4 are the Akaarband. When Ex.P.1 itself is not having valid reason, Exs.P.2 to 4 cannot be considered as good documents. Ex.P.5 is the Patta Book. Exs.P.6 to 10 are the postal receipts, Ex.P.11 is the death certificate of Pachegowda. The death of original purchaser Pachegowda is undisputed. However, the disputed facts that the appellants have not furnished original

documents for inspection of the court. Exs.P.12 to 55 are the R.T.Cs. of suit schedule property. Ex.P.12, 13, 34 to 51 are standing in the name of Kalegowda, whereas Ex.P.14 to 33 & 52 to 55 stand in the name of Madegowda S/o Marigowda. So, the possession of the plaintiffs over the suit schedule property is not in their name as on the date of filing of suit. Hence, the possession of the plaintiffs over the suit schedule property is also not proved. The Trial Court properly considered the oral and documentary evidence. The appellants utterly failed to prove that their appeal is to be considered on the ground introduced by them, but the appellants even in Appellate Court also failed to produce original sale deed or not explained the reason for non-production of the said sale deed.

18. The learned counsel for the appellants furnished 3 documents. The first document is the settlement Akaarband of the suit schedule property. Second document is the encumbrance certificate for

the period of 01.04.1951 to 03.11.2007. The third document is record of right of property No.574, 663, 1104, 1211. But again the appellants failed to produce the original document before this court also. As discussed supra, the secondary document like certified copy may be considered to be good document if reasons are given for failure to produce the original document. In spite of reference of the Trial Court in the judgment about non-production of the original sale deed again the plaintiffs failed to produce the same. A permanent Injunction can be granted by the court by passing a decree made at the hearing and upon the merits of the suit. Once such decree is passed, the defendant is permanently prohibited from the assertion of a right, or from the commission of an act, subject to proof of interference and peaceful possession of the plaintiffs over the questioned property as on the date of filing of suit or immediately after date of filing of suit. But the mandatory provision of immediate possession to be proved by the

plaintiffs is not seen by the attempt of the appellants. So, the possession of the plaintiffs is also not proved. Therefore, the application filed under Order 41 Rule 27 of C.P.C. is rejected, because the appellants/plaintiffs have not explained the reason for non-production of the said Aakaarband documents in the trial. Hence, **points No.1 to 3** are answered **in the negative**.

19. **Point No.4**: In view of the findings on the above points, I proceed to pass the following :-

ORDER

The appeal filed by the appellants/ plaintiffs is dismissed with no order as to costs.

I.A.IV filed by the appellants/plaintiffs under Order 41 Rule 27 of C.P.C. is rejected.

Consequently, the judgment and decree passed in O.S.No.96/2017 dated 06.08.2022 by the II Addl. Civil Judge and JMFC, Nanjangud, is confirmed.

Draw decree accordingly.

Send the trial court records
along with copy of the judgment.

*(Dictated to the stenographer, transcribed by her on computer,
revised, corrected and then pronounced by me in open Court on
this the 3rd day of June 2025).*

(Kamalaksha D.)
Senior Civil Judge & JMFC,
Nanjangud.