



**IN THE COURT OF III ADDL. SENIOR CIVIL JUDGE
AND JMFC, TUMAKURU**

PRESENT

Sri. Syed Arfath Ibrahim.M.,

B.A.L, LL.B.,

III Addl. Senior Civil Judge & JMFC,
Tumakuru.

Dated on this the 01st day of August 2026

R.A.No.114/2025

Appellant : M.S.Gangaraju
S/o Late Shivananjappa,
Aged about 70 years,
Agriculturist,
R/at Melehalli, Kora Hobli,
Tumakuru Taluk,
Now R/at Kanasu Nilaya,
3rd Cross, 60 feet Road,
Saptagiri Extension,
Tumakuru Town.

(By Sri.C.K., Adv.)

//VERSUS//

Respondent : Eshwaramma
D/o Marigangaiah,
Aged about 76 years,

Agriculturist,
R/at Melehalli, Kora Hobli,
Tumakuru Taluk.

(By Sri.C.K., Adv.)

Date and nature of the decree or order appealed against	Judgment and Decree passed in O.S.No. 719/2020, dated : 19.08.2025 by the III Addl. Civil Judge & JMFC, Tumakuru.
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Date of Institution of the Appeal	: 19.09.2025.
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Duration of the Appeal	: Years Month Days
	: 00 10 06

(Syed Arfath Ibrahim.M.,)
III Addl.,Senior Civil Judge
& JMFC Tumakuru.

J U D G M E N T

The appellant/plaintiff has preferred this appeal,
against the judgment and decree passed by III Addl. Civil
Judge and JMFC, Tumakuru in O.S.No.719/2020 dated

19.08.2025 wherein dismissed the suit of plaintiff for the relief of permanent injunction.

2. The parties are hereinafter referred in the same rank as they were before trial court.

3. The brief fact of the plaintiff case before the trial court was that;

It is averred in the plaint that the suit schedule property was the absolute property of the plaintiff and his brother and that they entered into a registered partition deed dated 16.12.1965 through which the plaintiff was allotted the suit schedule property and that he is the absolute owner in physical possession and enjoyment of the suit schedule property till date. That all the documents pertaining to the suit schedule property are standing in his name and he has paid upto date taxes. That the defendant is a stranger, having no right, title or possession over the

suit schedule property but is attempting to encroach upon the western side of the suit schedule property. That the documents produced by the plaintiff clearly establishes the fact that the plaintiff is in peaceful possession and enjoyment of the suit schedule property and that the cause of action for this suit arose one week prior to its filing, when the defendant tried to interfered and tried to encroach upon the western side of the suit schedule property. Hence, plaintiff filed the suit.

4. In response of the suit summons issued by the trial court, the defendant appeared through her advocate and filed written statement by admitting that, the father of the plaintiff and the father of the defendant divided their ancestral and joint family properties under a registered partition deed dated 15.12.1965 on the basis of which the khatha was transferred to the name of the father of the

defendant and that he was in possession and enjoyment of the properties which fell to his share. That the father of the defendant died on 13.11.2008, leaving behind his wife and the defendant and after the death of her mother, the defendant has succeeded to the property which fell to the share of her father through the said unregistered partition deed. It is contended that, in land bearing Sy.No.147 measuring 02 acres and 11 guntas, the Eastern side measuring 01 acre and 05 ½ guntas fell to the share of the defendant and it is bounded on the East by road and temple, West by hissa of the father of the plaintiff in the same survey number, North by rayagaluve and inam land and South by lands of Kumbakka, Chinnagaiah and Kempalakkaiah. That 01 acre and 05 ½ guntas on the Western side of the said bearing Sy. No. 147 measuring 02 acres and 11 guntas fell to the share of the father of the plaintiff and it is bounded on the East by hissa of the father of the defendant in the same survey number, West by

rayagaluve and Chikkathimmaiah's land, North by land of Chikkathimmaiah and Puttaiah and South by halla.

5. It is further contended that the plaintiff obtained the khatha of the entire extent of 02 acres and 11 guntas through MR 29/89-90 without the knowledge of the defendant against which, the defendant and her mother preferred an appeal before the Assistant Commissioner in RRT (T) 224/12-13. That the said appeal was allowed and the khatha was directed to be changed as per the registered partition deed dated 15.12.1965. That the plaintiff has alienated 07 guntas out of 01 acre and 05 1½ guntas to Lalithamma and that the plaintiff is only entitled to an extent of 38 ½ guntas in Sy.No. 147 but the plaintiff has mentioned the entire extent of 02 acres and 11 guntas without any right, title or possession over the 01 acre and 05 guntas of the defendant. That the plaintiff has

suppressed the real facts and is avoiding the change of khatha to the name of the defendant on the basis of the order passed by the Assistant Commissioner. That the plaintiff has no right, title or possession over the entire extent of land mentioned in the schedule of the suit and that the plaintiff has approached this Hon'ble Court with unclean hands as he has suppressed the real facts with an intention to trouble the defendant. That the plaintiff filed this false suit and produced a certified copy of the plaint and order sheet before the Tahsildar in order to object to the change of khatha to the name of the defendant. That the plaintiff has filed this false suit to trouble and cause loss, Inconvenience as well as damage to the defendant in order to grab the property of the defendant. Hence, prays to dismiss the suit.

6. On basis of above pleadings, the trial court framed the following issues ;

1. *Whether the plaintiff proves that he is in lawful possession and enjoyment of the suit schedule property as on the date of suit?*
2. *Whether the plaintiff proves that, the alleged interference by the defendant over the suit schedule property?*
3. *Whether the plaintiff is entitled for the reliefs as sought for?*
4. What order or decree?

7. In order to prove the case of plaintiff, the plaintiff got examined himself as PW.1, and got marked 5 documents as per Ex.P1 to P5 and the plaintiff has also examined one witness as PW.2. On the other hand, the SPA holder fo the defendant got examined himself as DW.1, and got marked 8 documents as per Ex.D1 to D8.

8. Upon hearing arguments on both the sides and based on the materials available on record, the trial court has

held all issues in the Negative, and dismissed the suit of plaintiff for the relief of permanent injunction.

9. Aggrieved by the said judgment and decree, the appellant/plaintiff has filed this regular appeal on the grounds that, the trial court erred in giving findings all negative. Even though the appellant have examined the appellant as PW.1 before the trial court and got marked the Ex.P1 to P5 even then the suit is dismissed. That the trial court erred in dismissing the suit basing on the documents standing in the name of respondent and taking view that entries in the revenue records shall be presumed to be true until contrary will be proved until it is disproved. The learned trial court without considering the evidence and also documents produced by the appellant wrongly came to the conclusion that the appellant is not in possession of the suit property. Hence, the appellant/plaintiff prayed to set aside the judgment and decree of the trial court.

10. In response to the notice issued by this court, the respondent/defendant appeared through advocate and after securing the TCR. I have heard arguments on both sides.

11. After hearing the arguments on both sides and on perusal of trial court record, the points that arise for my consideration are as under:

- 1. Whether the appellant/plaintiff proves that, the trial court had committed a error holding that plaintiff was not in possession of the suit property as on the date of this suit?*
- 2. Whether the appellant proves that trial court erred in hold that there was no interference in the suit property in the peaceful possession and enjoyment of the suit ?*
- 3. Whether the judgment and decree passed by the trial court is erroneous and interference of this court is required?*
- 4. What order or decree ?*

12. Upon hearing the arguments and on perusal of entire documents, my answer to the above points are:-

- Point No.1 : In the **Negative**
Point No.2 : In the **Negative**
Point No.3 : In the **Negative**
Point No.4: As per the order below
for the following ;

REASONS

13. POINT NO.1 to 3: Taken up together for common discussion to avoid repetition of facts on discussion.

The plaintiff had filed suit before the trial court seeking relief of permanent injunction against the defendant from interfering or causing obstruction to the peaceful possession and enjoyment over the suit property. To prove his case, he has examined himself as PW.1 and got marked 5 documents as per Ex.P1 to 5. He has also examined another witness as PW.2. In order to rebut the evidence of plaintiff, defendant examined himself as DW.1 and he has produced 8 documents as per Ex.P1 to P8.

14. In this case, the plaintiff is claiming to be in possession and enjoyment of suit schedule property to an extent of 2 acre 11 guntas. As per the case of the plaintiff he had acquired the suit property under the registered partition deed dated 15.12.1965 in which the suit property fell to his share. He claims that, he is absolute owner and in possession of suit property since the date of partition. On the other hand, the defendant has denied the same and contended that, the plaintiff is not in possession of the entire property as claimed by him.

15. Having heard both the parties, it is just a necessary to go through the documents relied by the plaintiff. The document which is relied by the plaintiff is a registered partition deed dated 15.12.1965. The same is marked as Ex.P1 and the same is also marked by the defendant as Ex.D2. On going through the document it can be seen that,

the plaintiff was allotted 'C' schedule property in Ex.P1. The extent of 'C' schedule property was 1 acre 5^{1/2} guntas out of the total 2 acre 11 guntas in Sy.No.147. This makes it clear that, as per recitals of Ex.P1, only 1 acre 5^{1/2} guntas was allotted to the share of plaintiff's father. Further on going through the cross-examination of PW.1 he admits that as per Ex.P1 his father was allotted only 1 acre 5^{1/2} guntas and the father of the defendant was allotted 1 acre 5^{1/2} guntas in Sy.No.147. He has further admitted that, as per Ex.P1 'B' schedule property was allotted to the share of M.S.Marigangappa to an extent of 1 acre 5^{1/2} guntas. Further in his cross-examination he clearly admits that, his father got only 1 acre 5^{1/2} guntas as per Ex.P1 which was on the western side. He also admits the boundaries mentioned in Ex.P1 to be true. He also admits regarding changed a katha as per the orders of Assistant Commissioner and also states that, he has not challenged the said orders.

16. Going by the above admissions and averments of Ex.P1, it is clear that, the father of the plaintiff was only allotted 1 acre 5^{1/2} guntas in the entire extent of Sy.No.147. However the plaintiff is claiming the entire survey number to an extent of 2 acre 11 guntas. As the plaintiff is claiming the entire 2 acre 11 guntas, the burden was on the plaintiff to prove the same. The plaintiff has to prove that, how he or his father had got possession of the entire 2 acre 11 guntas in Sy.No.147 when the Ex.P1 only shows his father had acquired 1 acre 5^{1/2} guntas as his share. In this regard, the entire evidence and the plaint is silent. When the person make claims or specific claims in respect of anything the burden to prove the same is on the person who makes such claims. In this case, the plaintiff claims to be possession of 2 acre 11 guntas of Sy.No.147. Such being the case, the burden to prove the possession over the entire extent was on the plaintiff. However in this case, the plaintiff has failed to provide any document to show that he was in possession

of 2 acre 11 guntas. Such being the case, this court holds that, the trial court was justified in holding that plaintiff has failed to prove the possession over the entire extent of the land as claimed in the plaint. Further this court also holds that, the trial court was justified in holding that, when the plaintiff has failed to prove his possession over the entire extent of suit property then the question of deciding interference does not arise at all. I do not find any reason to interfere in the judgment and decree passed by the trial court and the findings given to the issues raised by the trial court. The judgment and decree is passed on the material available on record and is in accordance with law. I do not find any reason to interfere in the same. Accordingly the ***point No.1 to 3 are answered in the Negative.***

17. Point No.4: In view of the discussion above, points as proceeds to pass the following:

ORDER

The Regular appeal filed by the appellant/plaintiff U/O 41 Rule 1 R/w Sec.96 of CPC is hereby dismissed.

The judgment and decree passed by the Learned III Addl. Civil Judge and JMFC at Tumakuru in OS.No.719/2020 dated 19.08.2025 is hereby confirmed.

Considering the facts and circumstances of the case, parties to bear their own cost.

Send back the TCR along with copy of judgment to the trial court.

(Dictated to the Stenographer transcribed by her, order corrected and then pronounced by me in the open court on this 01st day of August 2026.)

(Sri. Syed Arfath Ibrahim.M.)
III Addl., Senior Civil Judge & JMFC,
Tumakuru.