



**IN THE COURT OF THE I ADDL. SENIOR CIVIL
JUDGE & CJM TUMAKURU.**

Present: **G. DEEPA, B.A.L., LL.B.,**
I Addl. Senior Civil Judge & CJM
Tumakuru.

Dated, this the 25th day of June 2026

R.A.No.115/2025

- Appellants :
1. B.G. Hariyanna,
S/o Late B.H. Gagnadharaiah,
Aged about 63 years,
R/at Beladara, Kora Hobli,
Tumakuru Taluk,
 2. B.G. Ramachandraiah,
S/o Late B.H. Gangadharaiah,
Aged about 58 years,
R/at Shivanilaya, 9th Cross,
4th link Road, SIT Extension,
Tumakuru.
 3. B.G. Manjunath,
S/o Late B.H. Gangadharaiah,

Aged about 57 years,
R/at No.36/D, 6th Main,
1st Cross, Vinayaka Layout,
Nagarabhavi 2nd Stage,
9th Block, Bengaluru.

4. B.G. Parvathamma,
W/o Late Jayanna,
D/o Late B.H. Gangadharaiah,
Aged about 66 years,
R/at Shavandanahalli Village,
Kodigenahalli Post,
Madhugiri Taluk, Tumakuru District.

5. B.G. Jayamma,
W/o Late Govindaiah,
D/o B.H. Gangadharaiah,
Aged about 64 years,
R/at Mallasandra Village,
Ujjini Hosahalli Post,
Sasalu Hobli, Doddaballapura
Taluk, Bengaluru Rural District.

6. B.G. Veerendra Kumar,
S/o Late B.H. Gangadharaiah,
Aged about 55 years,

R/at 2nd Cross, Vidhyanagar,
Shreeramanilaya, Opp. SP Office,
Tumakuru.

Appellant No.1 to 5 are represented
by SPA holder namely B.G. Veerendra
Kumar Who is the
appellant NO.6 herein.

(By.Sri.GN., Advocate)

V/s

Respondent : Lakshmi,
W/o Murthy,
Aged about ..years,
R/at 8th Cross, 2nd Main,
S.S. Puram, Tumakuru.

(By Sri. GKS., Advocate)

Date and nature of the Order:	Appeal against the judgment and decree dated 14.08.2025 passed in O.S.No.563/2008 by the learned V Addl. Civil Judge & JMFC., Tumakuru
Date of the institution of the appeal	20.09.2025

Date of Judgment	25.06.2026		
Duration of the appeal	Year/s	Month/s	day/s
	01	09	05

(G. DEEPA)

I Addl. Senior Civil Judge,
& CJM Tumakuru

J U D G M E N T

The appellants being aggrieved by the Judgment and decree dtd:14.08.2025 passed in OS No.563/2008 on the file of learned Vth Addl. Civil Judge & JMFC, Tumkuru has preferred the instant appeal and sought for allowing the appeal with cost and such other reliefs.

2. The appellants are the LR's of plaintiff and the respondent is the defendant before the Trial Court. For the sake of convenience, the parties are referred to as per their rank before the trial court.

3. The brief facts of the plaintiff's case are that the plaintiff is the absolute owner in possession and enjoyment of the suit schedule property and other properties having purchased the same from its original owner through a registered sale deed dated 17.10.1966 for valuable consideration. As per the sale deed the katha of the properties have been changed in the name of the plaintiff by the CMC, Tumakuru. Accordingly, the plaintiff has been in possession and enjoyment of the suit schedule property by paying tax. Subsequently, the plaintiff has sold the western portion of the suit schedule property to one Ramegowda and partitioned the eastern portion to his son and has retained vacant site and the suit schedule property. The Government authorities have formed a road which runs East to West in between the entire property and it has been shown in the rough sketch. The property retained by the plaintiff measures 18 X 20 feet situated towards the southern side of the road. The plaintiff has also got retained a site measuring 48 X 70 + 65/2 on the northern side of the road.

4. Whereas all of a sudden, the defendant has started to put up the construction by encroaching the suit schedule property, illegally . As the plaintiff is an aged person and living in the village, he came to know the illegal act of the defendant when he visited the site casually. The plaintiff has put up the foundation and he has proceeded with the construction, hurriedly. The defendant is the stranger to the suit schedule property, having no manner of title and interest over the suit schedule property. Still the defendant has trespassed on the suit schedule property and he is proceeding with the construction. The act of the defendant was resisted by the plaintiff. But the defendant is a politically influential person and moneyed person having no regard for law and is trying to interfere with the suit schedule property. Hence the plaintiff has constrained to maintain the instant suit and accordingly sought for the relief of mandatory injunction, permanent injunction, cost and such other reliefs.

5. Upon service of summons, the defendant has appeared through his counsel of choice and filed written statement by denying the averments of the plaint in its entirety and contended that the suit schedule property is an imaginary property. The defendant has never encroached anybody's property much less the alleged property. The road is in existence since the time of immemorial. The defendant's property is situated towards the northern side and there is a road as shown in sketch. This defendant has already put up construction and plastering of wall has to be done. The defendant never encroached the property as mentioned in the schedule which is not at all in existence. Hence, question of encroachment does not arise. The plaintiff has admitted the existence of the road towards northern side and also admitted that the property of this defendant is situated towards southern side. This clearly goes to show that the existence of road abutting to the property of the defendant and there is no property of plaintiff as alleged by him.

6. The plaintiff is the stranger to the written statement schedule property and he is not in possession of the alleged suit schedule property. The defendant has put up compound wall to cover the written statement schedule property. She has obtained permission from the CMC, Tumakuru to demolish the dilapidated house. After demolishing the same, she has constructed the house by investing huge amount by obtaining license from the CMC, Tumakuru. The construction is in accordance with the license. The plaintiff has not questioned the defendant during the life time of her husband and after his death. The plaintiff has not challenged the permission given by the CMC, for construction of the house.

7. After the death of husband of the defendant, the defendant and her brother-in-laws have got divided joint family properties on 07.03.1992 through a registered partition deed, wherein the eastern schedule property was fallen to the share of this defendant. In the said partition deed, there is a recital in respect of old structure and boundaries in respect of the

written statement schedule property. There is no cause of action for the plaintiff to maintain the instant suit. The plaintiff has come up with the instant suit by inventing concocted and fabricated cause of action against the woman, who is a helpless lady, having no background as alleged by the plaintiff.

8. The plaintiff is the son of an advocate having, political background and police support. He did mischief while constructing the house by meddling with the possession of the defendant. Accordingly she has filed caveat under the apprehension that he may obstruct for her construction. The plaintiff has offered ransom to the defendant. On the refusal of the defendant, the plaintiff has filed the instant suit to harass the defendant. The defendant has availed loan from Sharada Mahila Co-operative Bank on the security of written statement schedule property for construction of the house. The suit of the plaintiff for injunction without there being any possession of the property is not maintainable. The plaintiff has no manner of right, title and muchless possession over the written

statement schedule property and accordingly sought for dismissal of the suit with cost.

9. Based on the material prepositions in the pleadings the Trial court had framed the following issues for consideration;

ISSUES

1. Whether plaintiff proves that he is the absolute owner in possession and enjoyment of the suit schedule property ?
2. Whether plaintiff proves that the defendant has put up construction by encroaching the suit schedule property illegally ?
3. Whether plaintiff is entitled for mandatory injunction as sought for ?
4. Whether the plaintiff is entitled for permanent injunction as sought for ?
5. What order or decree?

10. In order to prove the averments of the plaint, the plaintiff has examined himself as PW1 and during the pendency of the suit he has executed GPA in favour of his son who has examined as PW2 and relied upon 19 documents and closed the evidence. On the other hand, the defendant has examined herself as DW1 and relied upon 32 documents and closed evidence. Upon hearing the arguments on both the parties and considering the material on record, the trial court has answered issue No.1 to 4 in the negative and consequently dismissed the suit of the plaintiff with costs.

11. Being aggrieved by the judgment and decree passed by the trial court, the LRs of the plaintiff have preferred the instant appeal on the grounds that the impugned judgment and decree passed by the trial court is illegal, capricious and opposed to law, facts and probabilities of the case. It is against to the principles of natural justice. The judgment is perverse and against the evidence on record. The trial court has

misconstrued the facts and evidence and passed the impugned judgment. The trial court has not properly appreciated the oral and documentary evidence and answered the issues in the negative. The trial court has not weighed the oral and documentary evidence. Further it has not considered the admission given by the defendant and has erred in passing impugned judgment. Further it has not properly appreciated the principles laid down in the case of Vishram @ Prasad Goverkar and others V/S Sudesh Govekar (D) by LRs and others. Hence viewing from any angle, the impugned judgment and decree is not in accordance with law and is liable to be dismissed. Hence sought for setting aside the judgment and decree passed by the trial court by allowing the appeal.

12. Upon registration and service of notice on appeal memo, the respondent has appeared through her counsel of choice. Trial court record secured.

13. Heard the arguments of the appellants. The respondent filed written arguments. Perused the materials on record.

14 The Points that arise for my consideration are:

1. Whether the impugned judgment and decree of the trial court is perverse, erroneous, arbitrary, capricious and opposed to law, facts and circumstances of the case and calls for interference by this court?

2. What Order or Decree?

15. My findings on the above Points are:

Point No.1: In the **negative**

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

R E A S O N S

16. **POINT NO.1:** The material on record indicates that the plaintiff had maintained the original suit for the reliefs of mandatory injunction, permanent injunction, cost and such

reliefs in respect of the suit schedule property. Admittedly, the suit schedule property is an encroached portion. Upon appearance of defendant in response to the summons, she has resisted the claim of the plaintiff by denying the title of the plaintiff over the suit schedule property and claimed her title alleging no encroachment and claimed her title through the division among her in-laws and herself and further she claims that the construction is as per the licence issued by the concerned authority. Both parties have examined themselves as PW1 and DW1. The plaintiff has executed the GPA during the pendency of the suit. The said GPA has also examined as PW2. Both parties have relied upon their respective documents. It appears that none have examined any independent witness to corroborate their respective contentions and hence, it is needless to say that except the self interested testimony of the plaintiff and defendant, no independent oral testimony is available on record.

17. As mentioned supra, it is the suit for mandatory injunction, permanent injunction and such other reliefs. The very relief sought in the plaint clearly and unequivocally lead to infer that the plaintiff is out of possession of the alleged property encroached i.e. the suit schedule property. When he is out of possession, his title is at stake and further more the defendant's possession over the said portion or suit schedule property has been admitted by the plaintiff. Under the said circumstances, the remedy available for the plaintiff was to claim the relief of declaration in respect of the encroached area, its possession, and consequential relief of mandatory injunction and permanent injunction.

18. Whereas, it appears that though the plaint pleadings itself indicates about the denial of ownership and absence of possession of the plaintiff over the suit schedule property, his suit for mandatory injunction and permanent injunction is not at all the remedy. He ought to have sought the reliefs of declaration and possession. It appears that the trial court has

observed it and relied upon the judgment of the Hon'ble Supreme Court i.e. Anathulla Sundakar V/S. P. Bucha reddy (dead) by LR's and others , reported in AIR 2008 SC 2033. The Hon'ble court in the said judgment has held that "Where a cloud is raised over the plaintiff's title and he does not have possession a suit for declaration and possession, with or without a consequential relief of injunction is the remedy.

19. Whereas, here in the instant case, as discussed supra, the pleadings and the plaintiff indicate his title is denied in respect of the suit schedule property by alleged encroachment and he is out of possession. Under the said circumstances, the plaintiff ought to have maintained the suit for declaration and possession with or without the relief of injunction. It appears that the attempt of the plaintiff to amend the prayer was rejected by the Trial court on considering the objections of the opponent. The said order has reached the finality. The plaintiff has not at taken further steps. Hence, the legal disability has not been cured by the plaintiff. Under the said circumstances,

any amount of oral evidence and sale deed for having purchased the property do not come in the way of curing the defect. No doubt, since the date of purchase, the plaintiff might be the owner. Whereas, through out the pleadings, the plaintiff has pleaded about the denial of his title and absence of possession over the suit schedule property.

20. No doubt, both parties have relied upon ampty number of photos. Though the said photos depict the actual status of the property, one cannot identify it as the suit schedule property or the encroached area. On the contrary, the defendant claiming her title through her father-in-law and it is not the case of the plaintiff that this defendant suddenly appeared next to his property. But they are in the written statement schedule property during and prior to the life time of her father-in-law. That further, the defence of the defendant that old dilapidated structure was removed and on obtaining license, she has proceeded with the construction, have not

been denied by the plaintiff. No explanation is offered by the plaintiff in respect of non challenge of license.

21. That further, the judgment relied upon by the plaintiff in the case of Vishram E Prasad Gonekar and others V/S Sudesh Gonekar dead by LRs and others is not applicable to the case on hand as the said case is between the two co-owners and both have admitted the respective ownership as it is the joint family property and without the knowledge, he had constructed a house in the property of the plaintiff. Whereas, here in the instant case, both are neighbours, claiming right over the suit schedule property. The title of the plaintiff is at stake. Hence he ought to have maintained the suit for the relief of declaration and possession. As such, facts and circumstances of the case relied upon by the plaintiff and the facts and circumstances of the case on hand are altogether different and distinct. The non – applicability of the judgment relied upon by the plaintiff is justified. As such, the claim of the plaintiff that

the principle laid down in the said case is not properly appreciated by the trial court holds no water.

22. Further, while canvassing the arguments, the advocate for the appellant has drawn the attention of this court that the defendant has not produced any documents to show that 18 X 40 feet was fallen to her share in the alleged partition effected among the defendant and her family members interse, no measurement shown in Ex.D6 and 7 and there is a over writing in Ex.D3. But the burden of proof of the same shifts only upon the proof of ownership of the plaintiff over the suit schedule property. Whereas, the plaintiff has failed to discharge his burden. That further, it is a settled law that the weakness of the defendant cannot be used as a trump card. When the law bars the suit without the relief of declaration, any amount of oral or documentary evidence would not entitle the plaintiff from having a desired relief. Whereas, here in the instant case, the plaintiff has failed to establish the alleged

encroachment of the defendant with the cogent and convincing evidence.

23. Under the said circumstances and in the light of the above discussion, this court is of the considered opinion that the judgment and decree of the Trial court is in proper perspective and it is in accordance with law and procedure and it warrants no interference. Accordingly, the point No.1 is answered in the negative.

24. **POINT NO.2:** For the aforesaid findings, I proceed to pass the following:

O R D E R

The appeal filed U/Section 96 of CPC is hereby dismissed with costs.

Accordingly, the impugned judgment and decree dated 14.08.2025 passed in O.S.No.563/2008 on the file of

learned V Addl. Civil Judge & JMFC,
Tumakuru is hereby confirmed.

Office to draw decree
accordingly and send the TCR along
with copy of the Judgment and
decree to the concerned court for
information.

(Dictated to the Stenographer, transcribed by her on computer, revised,
corrected and then pronounced by me in the open Court on this the 25th day of
June 2026.)

(G. DEEPA)

I Addl. Senior Civil Judge & CJM
Tumakuru