

**IN THE COURT OF THE II ADDL. CIVIL JUDGE AND
JMFC-III, HUBBALLI , AT:HUBBALLI .**

Present

Smt. SHAKUNTHALA R., BA. LL.M.
II Addl.Civil Judge and JMFC-III, Hubballi

Dated this the 21st day of December 2019

O.S.No.163/2017

PLAINTIFF : ...
Smt. Nirmala W/o Shekarappa
Honnappanavar, Age: 59 Years, Occ:
Household, R/o No.168 RHBCS Layout,
Extension II Stage, B Block,
Srigandadha Kavalu, Bangalore – 91

(By Sri. L.M.Sheelvant, Advocate)

Vs.

DEFENDANTS 1 Smt. Sumitra W/o Irappa Torgal, Age:
Major, Occ: Government Service, R/o
Mangalwarpet, Adaki Oni, Dharwad

2 The State Government Employees,
Co-op Housing Society Ltd,
Vidyanagar, Hubli, R/by its President

3 The State Government Employees,
Co-op Housing Society Ltd,
Vidyanagar, Hubli, R/by its Secretary

(D1 By R.I.S, Advocate

D2 Exparte

D3 By R.K.S. Advocate)

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1. Nature of the suit : Declaration and Permanent Injunction
2. Date of Institution of the Suit : 01.03.2017
3. Date of commencement of evidence : 19.09.2018
4. Date of Judgment pronounced on : 21.12.2019
5. Total duration :

<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>
02	09	20

(Smt. SHAKUNTHALA R.)
II Addl.Civil Judge and
JMFC-III, Hubballi

J U D G M E N T

The plaintiff has filed this suit against the defendants for the relief of Declaration to declare that the registered lease cum sale agreement bond dated 5-02-1999 executed by the defendant nos. 2 and 3 in favour of defendant no.1 in respect of suit schedule property is illegal and not binding on the plaintiff and for permanent Injunction to restrain defendant no.1 from interfering with his peaceful possession and enjoyment over the suit schedule property.

2. DISCRIPTION OF SUIT SCHEDULE PROPERTY

The Suit property is the a residential plot bearing plot No.237+238/32 measuring 108 Sq Meters (1 Gunta – 1 x $\frac{3}{4}$ annas) situated in R.S. No.330 of Gamanagatti Village, TQ: Hubballi, District Dharwad, wherein a shed is being situated and the entire plot is fenced by a barbed wire, having the boundaries as follows:

Towards North	:	Road,
Towards South	:	Plot No. 237+238/35
Towards West	:	Plot No.237+238/31
Towards East	:	Plot No.237+238/33

3. Brief facts of the case of the plaintiff are as follows:

The plaintiff is the member as per receipt no. 3390 dated 25-10-1996 and the defendant nos. 2 and 3 are the president and secretary, respectively, of the State Government Employees House Building Co-operative Society, Vidhyanagar, Hubballi. The plaintiff had paid the plot development advance of Rs. 44,000/- and as such the said society has allotted the suit property in favour of the plaintiff and the registered lease cum sale deed

was executed in favour of the plaintiff by defendant nos. 2 and 3 on 07-11-1996 for valuable consideration of Rs.9000/- . The society has handed over the possession of suit property to the plaintiff and he has constructed a shed in the suit property and he has fenced the suit schedule property with barbed wire. In the month of November 2014 the plaintiff came to know that suit property was allotted in favour of defendant no.1 by executing registered lease cum sale deed dated 05-02-1999. The plaintiff has written a letter to the defendant no.2 regarding execution of lease cum sale deed in favour of defendant no.1 for which the defendant no.2 has replied that the earlier president of the society had executed the lease cum sale deed in favour of defendant no.1 due to oversight. The defendant nos.2 and 3 have created the said lease cum sale deed in favour of defendant no.1 who is fictitious person. The defendant nos.2 and 3 have no right to execute the lease cum sale deed as they have already executed registered sale deed in favour of the plaintiff. Hence the plaintiff instituted the present suit for the relief of Declaration and Permanent Injunction.

4. On the other hand, after service of suit summons the defendants nos. 1 and 3 have appeared before the court and they filed their written statement separately. In spite of due service of summons the defendant no.2 neither appeared before the court nor contested the suit and hence he was placed *ex parte*.

5. The defendant no.1 in her written statement has submitted that her husband was a member of society and as such on 5-02-1999 the defendant nos.2 and 3 have executed registered lease cum sale deed in respect of suit property in her favour and possession was also delivered and she applied for license for construction of building in the suit schedule property. It is further submitted that this court has no jurisdiction to entertain the present suit as the law mandates to approach the courts constituted under the provisions of Karnataka Co-operative Societies Act. It is further submitted that as per the conditions of lease cum sale deed the plaintiff has to apply for an appointment of mediator instead of approaching this Hon'ble

court. Therefore the defendant no.1 prays to dismiss the suit with exemplary costs.

6. The defendant no.3 in his written statement has submitted that on 25-10-1996 the suit schedule property was allotted by the defendant nos.2 and 3 in favour of plaintiff and lease cum sale deed was also executed and possession was also delivered to the plaintiff. It is further submitted that by the mistake of previous officers of the society the suit property was given to the defendant no.1 on execution of lease cum sale agreement dated 5-02-1999. It is further submitted that the defendant no.1 is not in possession of suit schedule property but the plaintiff is in possession of the same. It is further submitted that this court has no jurisdiction to entertain the suit. Hence the defendant no.3 prays to dismiss the suit.

7. On perusal of the pleadings and materials on record the following issues are framed:

ISSUES

1. Whether the plaintiff proves that she is the absolute owner of the suit schedule property by

virtue of registered lease cum sale deed dated 7-11-1996?

2. Whether the plaintiff proves that she has been in possession of suit property as on the date of suit?

3. Whether the plaintiff proves that the registered lease cum sale deed dated 5-02-1999 executed by the defendant no.2 in favour of defendant no.1 in respect of suit property is illegal and not binding on her?

4. Whether the plaintiff proves the alleged interference by the defendants?

5. Whether the defendant nos.1 and 3 prove that this court has no jurisdiction to entertain this suit as per Karnataka Co- operative Societies Act as contended in their written statement?

6. Whether the suit is properly valued and court fee paid thereon is sufficient?

7. What order or decree?

8. In order to prove the case of the plaintiff, the plaintiff herself has examined as PW-1 and got marked documents at Exs.P1 to 10 and closed evidence. In order to prove the case of defendant no.1 she herself has examined as DW-1 and two

witnesses were examined as DW.s 2 and 3 and got marked documents at Ex.D1 to 13.

9. This court by its order dated 11-10-2017 had treated issue nos.5 and 6 as preliminary issues and passed its order on the same in the negative and affirmative respectively as per order date 02-07-2018.

10. I have heard the learned advocates for plaintiff and defendants and perused the records. My findings on the above issues are as follows:-

Issue No.1 -	In the affirmative
Issue No.2 -	In the affirmative
Issue No.3 -	In the affirmative
Issue No.4 -	In the affirmative
Issue No.7 -	As per final order for following:-

-: R E A S O N S :-

ISSUE NOS.1 and 3 :-

11. Since these issues are interconnected with each other they are taken up together for discussion in order to avoid the repetition of facts. As narrated above, the plaintiff has filed this suit against the defendants for the relief of Declaration to

declare that the registered lease cum sale agreement bond dated 5-02-1999 executed by the defendant nos. 2 and 3 in favour of defendant no.1 in respect of suit schedule property is illegal and not binding on the plaintiff and for permanent Injunction to restrain defendant no.1 from interfering with his peaceful possession and enjoyment over the suit schedule property.

12. The prime contention of the plaintiff is that she is the absolute owner in possession and enjoyment of the suit schedule property by virtue of lease cum sale deed dated 07-11-1996 by the defendant nos.2 and 3 and she has constructed a shed in the suit schedule property in respect of which the defendant no.2 who is the president of society has executed another lease cum sale deed dated 05-02-1999 in favour of defendant no.1. The plaintiff has further contended that the subsequent sale deed cum lease dated 05-02-1999 does not bind her. PW. 1 who has reiterated the averments of plaint in her examination in chief has produced registered lease cum agreement deed dated 07-11-1996 at EX.P4 which goes to show

that the plaintiff has purchased suit schedule property for Rs. 9000/-. The defendant no.3 who is said to be the secretary of the society has categorically admitted the execution of EX. P4 in favour of plaintiff. The defendant no.3 has admitted the relationship of the plaintiff with the society. EX. P1 goes to show that the revenue documents of the suit schedule property has been standing in the name of the defendant no.1. EX. P5 is the cash receipt dated 25-10-1996 which goes to show that the plaintiff had paid Rs.44,227/- in favour of society. The defendant no.3 has not denied the payment made by the plaintiff in favour of society as per EX. P5. EX. P6 is the letter dated 15-12-2014 issued by the president of the society. EX. P7 is the copy of paper publication. EX. P8 is the letter dated 08-09-2015. EX. P9 and EX. P10 are the photographs.

13. DW-1 has deposed that her husband was a member of society and as such on 5-02-1999 the defendant nos.2 and 3 have executed registered lease cum sale deed in respect of suit property in her favour and possession was also delivered and she applied for license for construction of building in the suit

schedule property. DW. 1 has produced registered lease cum sale agreement bond dated 05-02-1999 at EX. D1, certified copy of hissa at EX. D2, property tax registers at EX. D3, D4 and D8, tax paid receipts at EX. D5,6,7,9,11 and 12, share certificate at Ex.D10 and copy of building proposed plan at Ex.D13.

14. The defendant No.3 has admitted the execution of both registered instruments. However he has contended that due to oversight and mistake the previous president has executed the Ex.D1 in favour of DW-1 in respect of suit property though the society had already executed EX.P4 in favour of plaintiff. The defendant No.1 has not challenged the EX.P4 and she has not sought for any counter claim. DW-1 has admitted in her cross examination that the suit schedule property was allotted prior to 05-02-1999. DW. 1 has further admitted that the defendant nos.2 and 3 had allotted the suit schedule property in favour of plaintiff in the year 1996 and therefore the defendant nos.2 and 3 did not have any rights to executed the agreement in her favour. The documents produced by the suit parties clearly show that the society had executed the lease cum sale agreement I favour of

plaintiff in the year 1996 under EX. P4 and thereafter again in the year 1999 the said society had executed the lease cum sale agreement in favour of defendant no 1 under EX. D1. Therefore the society had already transferred rights of the suit schedule property in favour of plaintiff in the year 1996 and as such it had no right to execute EX. D1 in favour of defendant no 1. Therefore the defendant did not get any rights over the suit schedule property. Moreover the defendant no 1 had not challenged EX. P4 and she has not sought for any counter claim. The principle **nemo dat quod non habet** speaks that a person who does not own property cannot confer it on another. As EX. P4 conveyed rights over the suit schedule property in favour of plaintiff from the defendant nos 2 and 3, the subsequent lease cum sale agreement i.e., Ex. D1 does not bind the plaintiff in favour of whom ownership rights of the suit schedule property have been transferred. Therefore this court answered issue nos 1 and 3 in the affirmative

ISSUE NOS .2 AND 4:-

15. Since these issues are interconnected with each other they are taken up together for discussion in order to avoid the repetition of facts. Undisputedly the suit schedule property is a vacant land having a small shed. The plaintiff has contended that she has constructed the said shed in the suit schedule property and she also fenced the suit schedule property with barbed wire. The defendant no 1, though admitted the existence of shed in the suit schedule property, has not taken any contention as to who has constructed the said shed. DW. 1 in her cross examination has admitted that she does not know that the plaintiff has appointed one Shoukhath Ali to look after the suit schedule property and the plaintiff has constructed the shed in the suit schedule property. The Hon'ble Supreme Court of India in **Anathula Sudhakar V/S P. Bucchy Reddy reported in A.I.R 2008 SC 2033** held that if two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. The defendant no 3 has also admitted the

possession of plaintiff over the suit schedule property. The principle that possession follows title applies to the instant suit. Mere production of proposed house plan and the R.T.C would not suffice to come to conclusion that the defendant no 1 is in possession of the suit schedule property in the presence of proved title of plaintiff. Therefore the plaintiff has proved her possession over the suit schedule property. When possession is proved, mere threat is sufficient to disposes from the suit schedule property or denial of right of plaintiff over the suit schedule property is sufficient to grant relief of permanent Injunction. Therefore this court answered issue No.s 2 and 4 in the affirmative.

ISSUE NO. 7:-

16. In view of the observations made above and for the reasons stated therein the suit of the plaintiff deserves to be decreed. Hence, I proceed to pass the following;

-: O R D E R :-

Suit filed by the plaintiff against
defendants is hereby decreed with costs.

It is hereby declared that the plaintiff is the absolute owner of the suit schedule property and the registered lease cum sale agreement bond dated 5-2-1999 does not bind the plaintiff.

The defendants are hereby permanently restrained from interfering with peaceful possession and enjoyment of the plaintiff over the suit schedule property.

Draw decree accordingly.

(Dictated to the stenographer, transcribed, typed and print out taken by her, corrected by me and then pronounced in the open court on this the **21st day of December 2019**)

**(Smt. SHAKUNTHALA R.)
II ADDL.CIVIL JUDGE AND JMFC-III,
HUBBALLI**

ANNEXURE

1. List of witnesses examined on behalf of plaintiff/s :

P.W.1 : Nirmala Honappanavar

2. List of documents exhibited on behalf of plaintiff/s :

Ex.P.1	:	RTC
Ex.P.2	:	Legal Notice
Ex.P.3	:	RPAD Acknowledgement
Ex.P.4	:	Sale deed
Ex.P.5	:	Receipt
Ex.P.6	:	Letter of the State Government Employees, Co-op Housing Society Ltd,
Ex.P.7	:	News paper

Ex.P.8 : Letter of the State Government Employees,
Co-op Housing Society Ltd,
Exs.P.9& 10 : Photographs

3. List of witnesses examined on behalf of defendant/s :

D.W.1 : Sumitra Torgal
D.W.2 : Mallikarjun Torgal
D.W.3 : Chandrashekhar Terald

4. List of documents exhibited on behalf of defendant/s :

Ex.D1 : Sale deed
Ex.D2 : Sketch
Exs.D3 & 4 : Property tax register
Ex.D5 : Receipt
Exs.D6 & 7 : Receipts
Ex.D8 : Tax paid details
Ex.D9 : Tax paid receipt
Ex.D10 : Share certificate
Exs.D11 & 12 : Deposit receipts
Ex.D13 : Building blue print

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