

IN THE COURT OF Ist ADDL.CIVIL JUDGE & JMFC ATHANI

**Present : Saheel Ahmed S.Kunnibhavi
B.Sc., LL.B.,**

Ist Addl.Civil Judge & JMFC Athani

O.S.NO.1151/2010

Dated this the 13th day of June 2016

Plaintiff..... 1. Smt. Gourawwa W/o Gurupad @ Gurappa
Honagouda, Age: 50 years, Occu:Household
R/o Halalli, Tq:Athani, Dist:Belagaum.

(By Shri R.K.Desai, Advocate)

-Vs-

Defendants..... 1. Smt. Mahadevi W/o Suresh Billur,
Age: 24 years, Occu:Household work,
R/o Halalli, Tq:Athani.

2. Shri Sadashiv himself called as S/o Gurupad
Honagouda, Age: 22 years, Occu:Coolie,
R/o Halalli, Tq:Athani.

(By Shri A.R.Mahajan Adv.)

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|----|-----------------------------------|----------------------------|
| 1. | Date of institution of suit | : 17.09.2010 |
| 2. | Nature of suit | : Declaration & Injunction |
| 3. | Date of recording of evidence | : 18.10.2011 |
| 4. | Date of closing of evidence | : 15.11.2011 |
| 5. | Date of pronouncement of judgment | : 13.06.2016 |
| 6. | Total duration | :Year/s Month/s Day/s |

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J U D G M E N T

The plaintiff has filed this suit for the relief of declaration, to declare that she is the absolute owner of the suit schedule property and consequential relief of permanent injunction restraining the defendants not to interfere into her peaceful possession and enjoyment of the suit schedule property.

2. Brief facts of the plaintiffs' case are as under:

Plaintiff contended that the suit schedule property is the self acquired property of her husband Gurupad @ Gurappa S/o Alagouda Honagouda. The husband of the plaintiff-Gurupad was the absolute owner of the suit schedule property. The plaintiff is the legally wedded wife of Gurupad. The said Gurupad was died on 16-05-2009. The plaintiff and this Gurupad had no issues. The plaintiff is the only legal heir of the said Gurupad. The marriage of the plaintiff with Gurupad was solemnized during the year 1980 in the presence of elders of the village at the resident of plaintiff at Shri Kashining Temple. Plaintiff led her married life with the Gurupad. Due to sever drought and for their livelihood and also to pay the loan, plaintiff and Gurupad had been to the Harugeri. Plaintiff further contended that, after passing of six months at Harugeri village, Smt. Sayawwa W/o Kashappa Biradar approached and informed that she is living with her children at Harugeri along with Ramappa Talawar resident of Gote. Plaintiff further contended that, the defendants No.1 and 2 are the

children of Ramappa Talawar with Sanyavva. Later after passing of 15 days, the mother of the defendants Sayavva had been to the house of plaintiff and she regularly spending time with Gurupad. This Ramappa did not tolerate and instructed her wife Sayawwa to keep herself away from Gurupad-husband of the plaintiff. However, she did not stop to approach the Gurupad. This Ramappa left with no option went away some other place. This Sayawwa -the mother of the defendants regularly was coming to the house of the plaintiff. This plaintiff objected her husband and this Sayawwa. However, this Sayawwa did not stop her approach to the husband of the plaintiff. The plaintiff approached her parent and her plaintiff along with village elders Shriyuths Mallappa Hipparagi, Kashiraya Rachappa Channaveer residents of Kazibilagi had been to Gurupadaap at Harugeri and requested him not to go with the mother of defendants Sanyavva. However, this Gurupad pushed this plaintiff out of his house. This Sayawwa stated living along with the husband of plaintiff-Gurupad. However, defendants are not the children of Sayawwa and Gurupad. Sayawwa begotten the defendants before her living with the Gurupad. This Sayawwa is not the legally wedded wife of this Gurupad and the defendants are not the children of Gurupad. The marriage of the Sayawwa was solemnized with one Kashappa and said Kashappa was still living and Kashappa was not divorced this Sayawwa. This Sayawwa is the wife of Kashappa and without her divorce with Kashappa she was living with this Gurupad. This Sayawwa has no right title or interest over the suit property. This plaintiff being the legally wedded wife of this Gurupad had inherited the entire suit schedule property. This Gurupad died on

16-05-2009 left behind present plaintiff and she is the absolute owner of the suit schedule property.

3. The defendant No.1 has appeared through his counsel and has filed her written statement contending that, the suit of the plaintiff is not maintainable either in law or facts. This defendant contended that her mother Sanyavva is the wife of Gurupadappa. This defendant contended that the suit property is the absolute property of Gurupad who died during the year 2009. This defendant denied that this plaintiff is not the legally wedded wife of Gurupad and she is only absolute owner of the suit schedule property. The marriage of the plaintiff was not solemnized with the Gurupad. This plaintiff has not led her married life with the Gurupad. This defendant had denied that this Gurupad and plaintiff had been to Harugeri for their livelihood. This defendant denied that the Sayawwa had approached this Gurupad and started living with Gurupad. She further denied that Sayawwa begotten the defendants before the marriage with this Gurupad. Further denied that Gurupad pushed the plaintiff out of his house and started living with Sayawwa without marriage. This defendant contended that, they are the children of Gurupad.

4. This defendant further contended that, the mother of the defendants died on 16-01-2007 at Harugeri village. The present Sayawwa is the legally wedded wife of Gurupad. The defendants are the children of Sayawwa. Marriage of the Sayawwa with Gurupad was solemnized on 15-10-1980 as per the customs in presence of elders and relatives. This Sayawwa led her married

life with Gurupad at Harugeri village. This Gurupad left Halalli and had been to the Harugeri village along with Sayawwa for their livelihood. These defendants are the children of Sayawwa and Gurupad. The defendants have studied in Harugeri at Karisidheswar Kannada Convent School Harugeri. Plaintiff is no way concerned to the family of deceased Gurupad. Plaintiff has not spent her life with Gurupad at Harugeri. Plaintiff is the wife of other person resedent of Kazibilagi. This Gurupad was the absolute owner of the suit schedule property and after his demise; the defendants are the owners of the suit schedule property as children of the Gurpadappa and Sanyavva. A defendant prays to dismiss the suit of the plaintiff.

5. Based on the pleadings of the parties, this court has framed the following issues:

1. Whether the plaintiffs prove that, she is the absolute owner of the properties bearing R.S.No.28/1B of Halalli village?
2. Whether the plaintiff proves that, she is in possession and enjoyment of the suit properties?
3. Whether the plaintiff proves that, the defendants are interfering into her peaceful possession and enjoyment of the suit properties?
4. Whether the plaintiff is entitled for the relief claimed?
5. What order or decree?

6. The plaintiff in support of her case has examined herself as

PW1 and also Gurappa Shivagouda Biradar as PW2 and relied on the documents marked at Exs.P1 and 2..

7. Heard the arguments of both counsels and perused the materials on record.

8. My answer to the above issues are as under:

Issue No.1 : In the negative

Issue No.2 : In the negative

Issue No.3 : In the negative

Issue No.4 : In the negative

Issue No.5 : As per the final order for the following :

REASONS

9. **Issues No.1 and 2** : During the course of argument, learned counsel for the plaintiff categorically contended that, the plaintiff is the legally wedded wife of Gurupad. The mother of the defendants Sayawwa is no way concerned to the family of this Gurupad. This Sayawwa had spent her life with Gurupad illegally and without marriage. This plaintiff specifically alleged that the marriage of the mother of defendants Sayawwa was solemnized with the Ramappa Talawarand and she is the legally wedded wife of that Ramappa Talawar. Marriage of the Sayawwa was not solemnized with Gurpadappa. This Ramappa was not divorced this Sayawwa. However, this Sayawwa was regularly approaching this Gurupad. This Ramappa informed this Sayawwa not to go with Gurupad. However, this Sayawwa by ignoring Ramappa was

approaching this Gurupad. The plaintiff approached her parents and her parents along with elders by name Shriyuths Mallappa Hipparagi, Kashiraya Rachappa Channaveer came to Gurupad and requested him to keep away himself from this Sayawwa. However, this Gurupad started abusing them in filthy language, in furtherance of his act pushed the plaintiff from his house, and started living with the Sayawwa. This Gurupad in spite of fact that marriage of the Sayawwa with Ramappa was not taken off, was living with the Sanyavva.

This plaintiff specifically alleged that the present defendants are not the children of Sayawwa and Gurupad. These defendants were born to the Sayawwa before her living with the Gurupad. This Sayawwa begotten these defendants with the Ramappa. The present defendants are the illegitimate children and they were not born to the Gurupad. This plaintiff specifically alleged that she had no issues with Gurupad and this Gurupad pushed her out from his house and she has been living with her parents. However, she is in possession and enjoyment of the suit schedule property. Plaintiff further contended that Gurupad died on 16.05.2009 and from the date of death of this Gurupad, she came in possession and enjoyment of the suit schedule property. Plaintiff is the only absolute owner to the suit schedule property. These defendants nor their mother are concerned to the family of this Gurupad. These defendants are the children of Ramappa with Sayawwa and not the children of this Gurupad. They are the illegitimate children to the Gurupad. The defendants are not in possession and enjoyment of the suit schedule property. The

plaintiff further contended that, though the defendants are alleged that their mother Sayawwa is the legally wedded wife of Gurupad, however in support of their claim, defendants have not produced even single document to show that this Sayawwa is the legally wedded wife of this Gurupad. These defendants have not produced any document to show that they are the children of Sayawwa with the Gurupad. These defendants have filed their written statement before this court. However, they have not at all entered into the witness box, the reasons best known to them and might have thought that truth will come out of their mouth, if they entered into the witness box. Silence of these defendants itself sufficient to show that they are not the children of this Gurupad. The defendants have not produced any document in support of their claim to show that they are the children of Sayawwa with Gurupad. Though the defendant in the written statement contended that both the defendants have studied in Harugeri at Karishiddeshwar Kannada convent school at Harugeri. However, the defendants have not taken pain to produce study certificate to show that they were studied at Karishiddeshwar Kannad convent school at Harugeri and they born to Gurupadappa. The plaintiff contended that, absolutely there is no records before this court to show that they are the children of Sayawwa with Gurupad.

The plaintiff further alleged that the marriage of Sayawwa was not solemnized with Gurupad and her marriage was solemnized with Ramappa and said Ramappa was not divorced this Sayawwa. Defendants are the children of Ramappa with

Sayawwa. The marriage of the Saywwa was not solemnized with Gurappa on 15.10.1980 at Harugeri village in presence of elders. If at all marriage with this Gurupad was solemnized with this Sayawwa, the defendants would have produced the documents in support of their claim to show the marriage of Sanyavva with the Gurupad. Gurupad is not the husband of this Sayawwa. This Sayawwa had illicit relationship with Gurupad.

10. Plaintiff contended that she is the legally wedded wife of Gurupad. Plaintiff in support of her claim got examined himself as PW1 and reiterated the entire plaint averements. Further in support of her claim got examined one Shri Gurappa Shivagouda Biradar as PW2.

This PW2 in his evidence contended that the marriage of the present plaintiff was solemnized with Gurappa in presence of elders at Kashining Temple during the yea 1980 and he was present at the time of marriage. This plaintiff had spent her life with Gurupad and due to drought they had been to Harugeri village. Later this Gurupad had developed illicit relationship with Sayawwa and pushed the present plaintiff out of his house. This present Sayawwa is the legally wedded wife of Ramappa and not this Gurupad. This Ramappa had not divorced his wife Sayawwa and the present defendants are the children of this Ramappa. These defendants have created documents and falsely contending that they are the children of Gurupad. Marriage of the Sayawwa had taken place before her living with this Gurupad. Defendants are no way concerned to the family of Gurupad. This

witness deposing in line with the plaintiff.

Though the plaintiff contended that she is the legally wedded wife of Gurupadappa, however, the Plaintiff in support of her claim has not produced single document to show that this Gurupad was the husband of the plaintiff. Further, there is no evidence available before the Court to show that, this Gurupadappa was the absolute owner of the suit schedule property. The plaintiff has brought my notice to the records of rights pertaining to the land bearing R.S.No.28/1B standing in the name of Honagouda Gourawwa Gurupad, Billur Mahadevi W/o Suresh and Honagouda Sadashiv Gurupad. Further, Ex.P2 is the records of right pertaining to the land bearing R.S.No.502/1A standing in the name of Honagouda Gourawwa Gurupad, Billur Mahadevi W/o Suresh and Honagouda Sadashiv Gurupad to the extent of 08 acres. The said suit schedule property standing in the name of this plaintiff and defendants. These documents depicting that plaintiff and defendant are the owner of the suit schedule property. The plaintiff contended that, the defendant entered their name in colluding with the revenue officers, However, the plaintiff has not challenged the said documents until this date. Further, there is no evidence available before this Court to show that, how the said property was transferred in the name of plaintiff as well as the defendant when each against other denying their relation with the Gurupadapp. That means to say that the plaintiff denying that the mother of the defendant is not the legally wedded of the Gurpadappa per contra this defendant contending that the plaintiff is no way concerned to

the family of the Gurupadappa. When such being the case how the said property transferred in the name of plaintiff and the defendant and what capacity. Further, the plaintiff never challenged the transfer of said property in the name of defendants as said entry is illegal and void ab initio and defendants are no way concerned to the schedule property and they are not in possession and enjoyment of the suit schedule property.

11. Per contra, plaintiff contended that she is in possession and enjoyment of the suit schedule property. Further, the plaintiff contended that any entry made in the name of defendants is illegal and not binding on the plaintiff. Plaintiff is paying revenue to the government. Plaintiff further contended that these defendants will not taken any pain to challenge the evidence of plaintiff nor they entered into the witness box, the reasons best known to them. If at all they are the children of Gurupad and Sayawwa they have entered into witness box and they would have produce document in support of their claim to show that they are the children of Gurupad. Absence of document and evidence and silence of defendants itself is sufficient to show that the plaintiff is the only class-I heir of Gurupad and she is entitle to retain entire suit schedule property. Plaintiff was paying revenue to the Government and she is in possession and enjoyment of the suit schedule property.

12. Plaintiff categorically contended that she is the legally wedded wife of this Gurupad and her marriage was solemnized

with this Gurupad on 16.05.2009, plaintiff has not produced even single document in support of her claim to show that she is the legally wedded wife of this Gurupad. Further contended that this Gurupad died on 16.05.2009 and even she has not produced death certificate of her alleged husband. Absolutely there is no record before this court to show that plaintiff is the legally wedded wife of this Gurupad. Plaintiff alleged that she is the legally wedded wife of Gurupad, it is bounden duty of the plaintiff to produce cogent and reliable evidence before this court to show that she is the legally wedded wife of this Gurupad. Further, plaintiff contended that her marriage with Gurupad had been taken place during the year 1980 and plaintiff is required to show that she is the legally wedded wife of this Gurupad. Defendants denied that plaintiff is the legally wedded wife of this Gurupad. In her written statement this plaintiff is not the legally wedded wife of this Gurupad. When such being the case it is fundamental duty of the plaintiff to produce any document to support their claim to show that she is the legally wedded wife of Gurupad. Further, on perusal of the documents produced by the plaintiff it shows that the said property transferred in the name of plaintiff as well as in the name of defendants No.1 and 2. How the said property transferred in the name of plaintiff as well as the defendant is a mystery before the Court. Absolutely there is no evidence before this court to show that the plaintiff is the legally wedded wife of this Gurupad. Mere for the reason that the said property was transferred in the name of this plaintiff and defendants it cannot be said that the present plaintiff is the wife of this Gurupad and these defendants are the children of Gurupad. When present

plaintiff failed to show that she is the legally wedded wife of Gurupad then it also cannot be said that these defendants are the children of Gurupad. It is also bounden duty of the defendants to show that they are the children of Gurupad. On perusal of written statement of defendants, these defendants specifically contended that they studied at Karishiddeshwar Kannada convent school at Harugeri in support of their claim to show that they are studied at Karishiddeshwar Kannada Convent School at Harugeri have not produced any document. The present plaintiff failed to show that she is legally wedded wife of Gurupad but it cannot be said that these defendants are able to prove that they are the children of Gurupad. Absolutely there is no records available before the court to show that the present plaintiff is the legally wedded wife of Gurupad and defendants are children of Gurupad. Mere for the reason that RTC pertaining to the suit schedule properties standing in the name of present plaintiff it cannot be said that the plaintiff and defendants are class-I heirs of this Gurupad. Parties approached before the court with specific contention that they are class-I heirs of Gurupad they required to show that they are the legal class- I heirs of this Gurupad. In absence of any document this court comes to conclusion that neither the plaintiff nor defendants are class-I heirs of this Gurupad. Further, there is no evidence available before the Court to show that, the plaintiff is in peaceful possession and enjoyment over the suit schedule property. The documents available before this Court is only records of rights, where as it is standing in the name of plaintiff and defendant. The plaintiff alleges that, she is in peaceful possession and enjoyment over

the suit schedule property. However, she has not produced any revenue receipt paid to the Government. Hence, I answer issue No.1 and 2 are in negative.

13. **Issue No.3 and 4**: Plaintiff contended that, defendants are interfering in her peaceful possession and enjoyment over the suit schedule property. However, plaintiff to show that she is in peaceful possession and enjoyment over the suit schedule property, the question of interference of the defendants does not arise at all. Therefore, plaintiff is not entitle any relief as claimed. Hence, I answer issue No.3 and 4 are in negative.

14. **Issue No.5** :In view of the discussions made while answering above issues, I proceed to pass the following :

ORDER

Suit of the plaintiff is dismissed.

No order as to costs.

(Dictated to the Stenographer, transcribed and computerized by him, corrected and then pronounced by me in the open court on this the 13th day of June 2016)

(Saheel Ahmed S.Kunnibhavi)
Ist Addl.Civil Judge & JMFC
Athani

ANNEXURE

1. List of witnesses examined on behalf of plaintiff:

PW1 : Smt. Gourawwa W/o Gurupad @
Gurappa Honagouda
PW2 : Gurappa Shivagouda Biradar

2. List of documents exhibited on behalf of plaintiff:

Ex.P1& 2 : Record of rights

3. List of witnesses examined on behalf of defendants:

-----NIL-----

4. List of documents exhibited on behalf of defendants:

-----NIL-----

(Saheel Ahmed S.Kunnibhavi)
Ist Addl.Civil Judge & JMFC Athani