

IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,

At:GOKAK

PRESENT:

SRI. VEERESH KUMAR C.K. B.A.L, LL.M, CC in Cyber Laws.

Prl. Civil Judge & JMFC,

Gokak.

O.S. No.71/2013

Date Of Judgment: 01st day of July, 2019.

1. Smt. Kashavva Yamanappa Gudaj,
Age: 68 yrs, Occ: Household work,
R/o: Konnur, Tq: Gokak.

2. Mayur Yamanappa Gudaj,
Age: 35 yrs, Occ: Cooli,
R/o: Konnur, Tq: Gokak.
(By Shri. DBA. Advocate.)

...Plaintiffs

Vs

1. Umesh Shetteppa Gudaj,
Age: 45 yrs, Occ: Agriculture,
R/o: Konnur, Tq: Gokak.
(Defendant by Shri. B.S.K. Adv.(Retired))

...Defendant

Date of Institution of suit	:	18-01-2013		
Nature of suit	:	Permanent Injunction		
Date of commencement of Recording of evidence	:	12-09-2017		
Date of pronouncement of Judgment	:	01-07-2019		
Total Duration	:	Years	Months	Days
		06	05	13

:: JUDGMENT ::

The present suit is instituted for the relief of permanent injunction seeking to restrain the Defendant from encroaching the suit property i.e., EF portion of the schedule A hand sketch map.

2. The case of the Plaintiffs is that: The suit property is the red tiled house and open space and bearing TPC. No.1508, measuring 12 X 70 feet house and 12 X 34½ feet open space, situated within the limits of Konnur village of Gokak taluka and their common boundaries are detailed below:

East: House of Irappa Gudaj.

West: House of defendant.

South: Road.

North: House of Adivappa Melavanki.

The plaintiff is the permanent resident of the Konnur village and he is in possession of the suit property i.e., open space 12 X 34½ feet. Since from the ancestors of the plaintiff, the plaintiff is in possession of the suit property. The husband of the plaintiff was owner of the suit property and after his death the plaintiff has succeeded to the suit property. Towards the east portion of the suit property there is a house belonging to the family of the plaintiff. The plaintiff is regularly paying the tax with respect to the suit property to the authorities concerned. In the suit property the family of the plaintiff use to store the things in the open space. Towards the western side there is house of the defendant. Few years ago the defendant was renovating his house and during at that time he entered into an agreement with the plaintiff that he

would use the wall and repair the wall of the plaintiff for construction of his house. After his construction the defendant tried to encroach the 12 X 34½ feet suit property by attempting to construct over the same. The defendant is intending to construct the house in the suit property in the name of his daughter. The defendant is trying to encroach the EF portion of the schedule A annexed with a plaint. The plaintiff asked the defendant not to encroach upon the property of the plaintiff but the defendant did not heed to the request of the plaintiff. On 30-11-2012 the plaintiff got issued a notice through her counsel. The plaintiff also brought the said aspect to the notice of the panchayat authorities in regard to the attempt of encroachment by the defendant and the said authority also visited the spot and asked to not to encroach the property of the plaintiff. The plaintiff also approached the concerned jurisdiction police against the encroachment of the defendant but the defendant has not stopped his encroachment. Hence, the present suit.

3. The suit summons was served on the defendant and defendant entered his appearance through his counsel and has filed written statement denying the plaint averments.

In the written statement it is contended that the plaintiff has no right, title or interest in the property of the defendant. The defendant never encroached the property of the plaintiff. The payment of Court fee is not proper and correct and this Court has no jurisdiction. The plaintiff has not exhausted all the remedies under the provisions of the Gram Panchayat Act. The plaintiff is not entitled for any relief as prayed for in the plaint. The plaintiff never in possession and enjoyment of the property. The property of the plaintiff and defendant are different. The defendant never encroached the property of the plaintiff and has no right to construct over the open space of the plaintiff. The defendant has owned the open space in-front of his newly constructed building. The defendant is intending to construct a building in the name of his daughter Ashwini under the scheme of Ashraya Yojane. In the open space of defendant, the plaintiff has no right, title or interest. The plaintiff is never in possession and enjoyment of the open space of the defendant. For the last many years, the relation between plaintiff and defendant is not cordial. Therefore, by taking undue advantage of the strained relation and also with an intention to harass the defendant, the plaintiff has filed the suit

without being any legal and valid cause of action and suit is not maintainable and the defendant has collected all the building materials by purchasing the same by investing the money. Thereby, prayed for dismissal of the suit.

4. Based upon the pleadings, my predecessor in office had framed the following;

ISSUES

1. Whether the plaintiff prove that she is in lawful possession of suit "EF" property as on the date of suit ?
2. Whether the Plaintiff further proves that the alleged interference ?
3. Whether the plaintiff entitled for the relief ?
4. What order or decree?

5. The plaintiffs in order to prove their case got examined Plaintiff No.2 as PW.1 and got examined two witnesses as PW.2 & 3 and got marked Ex.P.1 to P.8. In spite of several opportunities PW.1 to 3 have not been cross examined by the defendant nor has led any evidence on his behalf.

6. Heard the arguments. Meticulously perused the available records the above issues are answered as follows;

Issue No.1: In the Affirmative

Issue No.2: In the Affirmative

Issue No.3: In the Affirmative

Issue No.4: As per the final Order for the following:-

:: REASONS ::

7. Issue Nos.1 to 3: Since these issues are inter related to each other and in order to avoid repetition of facts they are taken together for consideration at one stretch.

The plaintiffs in order to prove their case got examined plaintiff No.2 as PW.1 and has filed affidavit in lieu of examination of chief. In the affidavit the averments of the plaint has reiterated. In support of their case plaintiffs produced the documents, they are, Ex.P.1 to P.8.

Ex.P.1 & 2 are the tax paid receipts. Ex.P.3 is the legal notice issued by plaintiffs to Chief officer, Pattana Panchayat, Konnur. Ex.P.4 & 5 are the Photographs. Ex.P.6 & 7 is the Record of Rights (Form No.3) standing in the name of plaintiffs. Ex.P.8 is the Gift deed executed by plaintiff No.1 in favour of plaintiff No.2.

8. On careful evaluation and analysis of the plaint averments, affidavit/deposition of PW.1 to 3, it is found that the plaintiffs are in possession of the suit property as per Ex.P.6 & 7, which are the Record of Rights with respect to suit property. The names of the plaintiffs can be seen in the said exhibits.

9. On perusal of Ex.P.4 & 5 it is found that, there is a open space and some of the stones are piled up. PW.2 & 3 and consistently stated in their affidavit that, the defendant intentionally is encroaching upon the property of the plaintiffs. The dividing wall between the plaintiffs and defendant is common wall. It is clear from Ex.P.6, which is the Form No.3 of Konnur Village Panchayat and the name of the plaintiff No.2 is clearly forthcoming as the owner of the property. The same bears the property number which is the suit property. Ex.P.7 is the also the same document of the year 2013-14. Ex.P.8 is the Registered Gift deed by plaintiff No.1 in favour of plaintiff No.2 with respect to the suit property. All the document goes to show that the plaintiffs are in possession of the suit property.

10. PW.1 to 3 have not been cross-examined by the defendants nor challenged nor rebutted the said evidences of the plaintiffs. Thus it goes to show that the evidences of plaintiffs and the documents are unchallenged and un-rebutted. There is absolutely no material on record to discredit the evidence of PW.1 to 3 and documents produced by them before this Court, the preponderance of probability is in favour of the plaintiffs, in view of

which, the plaintiffs have proved Issue Nos.1 and 2. As the plaintiffs have successfully proved Issue No.1 and 2 and by virtue of which, they are entitled to the relief prayed in plaint. As such the plaintiffs have right to protect their possession and property. Even they are entitled to the relief of permanent injunction as contemplated as under Sec.38 of Specific Relief Act. Resultantly the above issues are answered accordingly.

11. Issue No.4: For the reasons stated and the discussions made above, proceed to pass the following:-

:: ORDER ::

- *Suit is decreed with cost*
- *The defendant by way of permanent injunction are hereby restrained from encroaching the EF portion of suit property.*
- *Draw Decree accordingly.*

(Directly Dictated to the Stenographer on computer, typed by him, corrected and then pronounced in the Open Court, by me, on this 1st day of July, 2019.)

(Veeresh Kumar C.K.)
Prl. Civil Judge & JMFC,
Gokak.

ANNEXURE**1. List of Witnesses examined for Plaintiffs:**

PW.1: Mayur Yamanappa Gudaj.

PW.2: Vittal Shyamu Gudaj.

PW.3: Manohar Tarappa Myageri.

2. List of Documents marked for Plaintiffs:

Ex.P.1 & 2 : Tax paid receipts.

Ex.P.3 : Legal notice.

Ex.P.4 & 5 : Photographs

Ex.P.6 & 7 : RTC (Form No.3)

Ex.P.8 : Original copy of Gift deed.

3. List of Witnesses Examined for Defendant:

Nil

4. List of Documents marked for Defendant:

Nil

(Veeresh Kumar C.K.)

Prl. Civil Judge & JMFC,
Gokak.