

IN THE COURT OF THE PRIL.J.M.F.C., (JR.DN.) MUDHOL.

AT: MUDHOL.

O.S.NO:311/2006

Present: Shri. M.C. Nadagouda

M.Com,LL.B.(Spl)

Pril.Civil Judge(Jr.Dn.)Mudhol.

Dated this the 13th Day of June 2007.

1. Shri. Yallappa S/o: Siddappa Kagi

Age: 78 years, Occ:Agriculture,

R/o: Belagali, Tq:Mudhol. ..Plaintiff.

Vs.

1. Sangappa S/o Balachandra Birajanvar

Age: 21 years, Occ: Agriculture,

R/o: Belagali, Tq: Mudhol.

2. Siddappa S/o: Siddappa Kagi,

Age: 65 years, Occ: Agriculture,

R/o: Belagali, Tq:Mudhol. ..Defendants.

=====

Plaintiff by Shri. IHA Advocate.

Defendant No.1 by Shri. PMV Advocate.

Defendant No.2 placed exparte.

=====

Date of Institution of suit : 17/10/2006

Nature of the suit : Declaration and
Injunction.

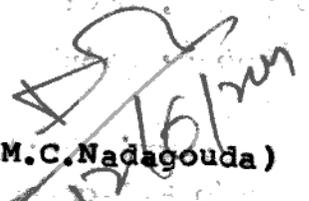
Handwritten signature and date:
12/6/2007

Date of commencement of recording

of evidence : 06/02/2007.

Date of Judgement pronounced ; 13/06/2007.

Total Duration	Years	Month/s	Day/s
	00	07	25


(M.C. Nadagouda)

Pril. Civil Judge (Jr. Dn.) Mudhol.

J U D G M E N T

The plaintiff filed this suit for declaration and consequential relief of injunction.

2. In brief facts of the case are as under:

The suit schedule property is fallen to the share of the plaintiff in a family partition took place amongs his brothers and since then the plaintiff is in actual possession and enjoyment of suit property.

The plaintiff is old ill-literate person and defendant No.2 is his younger brother. Defendant No.1 is neighbouring land owner and fully known about plaintiff and defendant No.2. Defendant No.1 in the last week attempted obstruct peaceful possession and enjoyment of plaintiff and his family members over the suit property denying the lawful title of the plaintiff. That on verification of records to the great surprise to the plaintiff it is revealed that that defendant No.1 and 2 cultivating with each other have manipulated with document stayed as sale deed on 18/6/2004. The plaintiffs are not sold to defendant

[Handwritten signature]
12/6/2007

No.1 and plaintiff was not in need of money. Further this revealed that defendant No.2 has misrepresented himself as owner before the registering authority and got registered the document defendant No.2 was not the owner of the suit property but has misrepresented himself as owner and played mischief and executed the document, but no title has been passed or conveyed to defendant No.1 sale deed Dtd: 18/6/2004 sham, bogus and manipulated one and as such no title is passed to defendant No.1 and the sale transaction is not binding on plaintiff. Plaintiff is in actual possession and enjoyment of the suit property to the knowledge of defendants. Hence plaintiff sought the relief of declaration and also consequential relief of injunction.

3. Suit summons were served upon defendant No.1 and 2 and defendant No.1 appeared through his counsel, but defendant No.1 has not chosen to file his written statement and defendant No.2 is placed *exparte*.


12/6/2007.

4. The plaintiff himself examined as PW.1 and got marked Ex.P1 to P4.

5. The points that arise for my consideration are as under:

- 1. Whether plaintiff proves that he is an owner and in possession of suit property?
- 2. Whether plaintiff further proves that defendant No.2 has misrepresented himself as owner of and executed the sale deed in favour of defendant No.1 on 18/06/2004?
- 3. Whether plaintiff further proves that the sale deed executed by defendant No.2 in favour of defendant No.2 is not binding?
- 4. Whether the plaintiff further proves that he is entitled for declaration as sought for?
- 5. Whether the plaintiff proves that he is entitled for the relief of injunction as sought for?
- 6. What relief of order?

6. My findings on the above points are as under:

- Point No.1: In the Negative.
- Point No.2: In the Negative.
- Point No.3: In the Negative.
- Point No.4: In the Negative.
- Point No.5: In the Negative.
- Point No.6: As per the final order

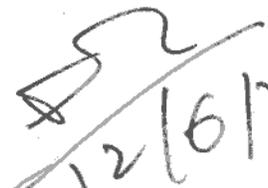
for the following:

[Handwritten signature]
12/6/2007

REASONS

7. Point No.1: It is specific case of the plaintiff that defendant No.2 is his younger brother and plaintiff is an old ill-literate person. The defendant No.1 is neighbouring land owner and when the defendant No.1 attempted to obstruct and enjoyment of the suit property, the plaintiff notices that defendant No.1 and 2 colluding with each other have manipulated a document styled as sale deed Dtd: 18/6/2004. So the plaintiff's contentions that he has not executed any sale deed ^{and} (the defendant No.2 was not the owner of the property but he misrepresented the defendant No.1 and sold the suit schedule property to defendant No.1.

8. The plaintiff himself examined as PW.1 and he reiterated the contents of plaint and deposed that the suit schedule property bearing R.S.No: 211/4B/2 measuring 1Acre 5Guntas situated at Belagali village Mudhol taluka. And this property was fallen to the share of the plaintiff in a family partition and from that date on words he is in possession of the suit property. The plaintiff was


12/6/2007

also deposed that I have not executed any sale deed in favour of defendant No.1 and this documents is created by defendant No.2 who is younger brother of the plaintiff. The plaintiff has produced the certified copy of the sale deed under Ex.P1 and as per Ex.P1 the sale deed is executed by Yallappa Siddappa Kagi in favour of Sangappa Balachandappa Beerajanawar for Rs. 1,40,000/- and looking to the certified copy of the ^{Sale deed. The} thumb impression of plaintiff Yallappa Siddappa Kagi is found and there are two witnesses to this document. Plaintiff also produced RTC wherein the name of Sangappa Beerajanawar is found place in Column No: 12 of the RTC extract for the year 2005-2006. Yallappa Siddappa Kagi and Sangappa Balachandappa Beerajanawar is entered, so looking to the RTC extract the name of defendant No.1 is came to be entered. The plaintiff also produced ration Card under Ex.P3 and Ex.P4 is identify Card issued by the Election Commission. So ^{on} all these documents the plaintiff contentions that he has not

DS
12/6/2007

executed any sale deed and still that he is in possession of the suit property and ~~existing~~ cultivating the suit land. When the plaintiff come-up with specific contention that he has not executed sale deed in favour of defendant No.1 and he sought the relief of declaration that he is in owner and in possession of the suit property . Except the evidence of PW1 the plaintiff has not examined any other independent witnesses to show that he is in possession of the suit property nor he has executed sale deed, when a registered document is executed before the Registrar and the ^{Contention} condition of the plaintiff that he has not executed the alleged sale deed Ex.P1 though defendant No.1 has appeared through his counsel , but not chosen to file the written statement but even then heavy burden is cast upon the plaintiff to prove that he has not executed the sale deed in favour of defendant No.1. But looking to Ex.P2 the name of defendant No.1 and plaintiff is entered and in Column No.9 of the RTC the defendant No.1 's name is entered and plaintiff

SS
12/6/2005

has not produced any other document to show that he is in possession of the property before filing of this suit and this Ex.P1 is came to be executed on 18/6/2004 and defendant No.2 is placed exparte. Hence, looking to the documents Ex.P1 is registered sale deed the plaintiff could have examined the attesting witnesses to show that he has not executed sale deed in favour of defendant No.1, but unfortunately the plaintiff has not examined the independent witnesses and also signatory to Ex.P1 sale deed. Hence, I am of the considered opinion that when the name of defendant No.1 is came to be entered and even the plaintiff has not produce any other tax paid receipt to show that he is in possession of the property even after the sale deed. But the plaintiff has not produced any other document to show that he is in possession of the same. Except the evidence of PW.1 the plaintiff has not taken any pain in examining the independent witnesses and also who are adjacent to the owner of the suit property. So if the really plaintiff is in

DR
 12/6/2004

possession of the property he could have led the independent witnesses to show that he is in actual possession of the property. Hence, I am of the opinion that the plaintiff has failed to prove that he is in possession of the suit property except the oral evidence of plaintiff, the plaintiff has not examined any independent witnesses when the plaintiff ^{was} were sought for the declaration of the sale deed, the sale deed is bogus and Sham document the plaintiff has to examine the attesting witnesses to Ex.P1. In the absence of the evidence of ^{witnesses} the plaintiff has failed to prove ^{that} he is in actual possession of the suit schedule property as on the date of filing of the suit. Hence I answer Point No.1 in the Negative.

9. Point No.2: The plaintiff deposed in his evidence and also stated ~~in~~ in his plaint that the defendant No.2 is his younger brother and defendant No.2 has misrepresented himself as a owner and executed the sale deed in favour of defendant No.1. Looking to Ex.P1 sale deed the copy of the sale deed there is a


12/6/2007

photo and ^{to} the sale deed and the name of the executant
 shown as Yallappa Siddappa Kagi and thumb impression
 is also obtain by the Subregistrar to Ex.P1. And
 the plaintiff produced Ex.P3 Ration Card, Ex.P4 is identity
 Card. So on the basis of the photo it cannot be
 said that the plaintiff has not executed the sale
 deed to prove that the sale deed is sham ^{document} and defendant
 No.2 has misrepresented the evidence of attesting
 witnesses to Ex.P1 is very material. There are
 two witnesses to Ex.P1, but the plaintiff has not
 led their evidence there is no reason ^{why} the plaintiff
 has not examined the above attesting witnesses.
 When the plaintiff taken-up a specific contention
 that the defendant No.2 has misrepresented himself
 as a owner and executed the sale deed, if i.e.,
 the case the plaintiff could have examined the
 attesting witnesses, but there are no reasons why
 the plaintiff has not examined any attesting witnesses.
 Though the defendant is placed ^{when the} ex parte, Plaintiff
 has sought the declaration he has to prove that
 the defendant No.2 has misrepresented and himself has

FR
12/6/2017

executed the sale deed. Looking to Ex.P1 the name of plaintiff is shown who has executed the document

in favour of defendant No.1 and there is a presumption

when a document registered before Sub-Registrar ^{above}

Unless the plaintiff shows that the defendant No.1 has

misrepresented and executed the sale deed. Except

the evidence of plaintiff there is no other independent

witnesses to show that the defendant No.1 ^{2 have Created Sale} is entered

~~in the RTE~~ and only on the basis of the photo Ex.P3

and Ex.P4 it cannot be said that the defendant No.2

has misrepresented and executed the sale deed.

Though defendant No.1 has appeared, but not chosen to

file the written statement, but even then the plaintiff

has to prove that the defendant No.2 has misrepresented;

but absolutely there is not evidence adduced by the

plaintiff to show that the defendant No.2 is younger

brother has misrepresented and executed the sale

deed. Hence, I am of the considered opinion that

when the registered document, ⁱⁿ if absence of the

evidence and even in the evidence of plaintiff, the


12/6/2005

plaintiff has not stated that how the defendant No.2 has misrepresented, but except deposing in his evidence that defendant No.2 has misrepresented and executed sale deed. Hence looking to the evidence of the plaintiff the plaintiff has failed to prove that the defendant No.2 has misrepresented to the plaintiff and executed the sale deed. Hence I answer Point No.2 in the Negative.

10. Issue No.3 and 4: These two issues are inter connected and as such answered by clubbing two issues.

It is specific case of the plaintiff that he has not executed the sale deed in respect of suit schedule property in favour of defendant No.1 and the sale deed Ex.P1 is not having his signature which is executed by defendant No.2 by misrepresenting himself as a plaintiff and the certified copy of the sale deed produced at Ex.P1 and Ex.P2 is RTC extract, Ex.P3 is Ration Card and Ex.P4 is identity Card. So on these documents the plaintiff claims that the

PS
12/6/2017

sale deed is not binding upon him. The plaintiff has sought for the relief of declaration and the consequential relief of injunction. Admittedly the sale deed is came to be executed on 18/06/2004 and in Ex.P1 the value of the suitproperty is shown as Rs. 1,04,000/- , and the plaintiff has sought the relief of cancellation of the sale deed. The plaintiff has to pay the Court fee as per the provisions of Sec: 24(A) of Karnataka Court Fees and suit Valuation Act. Looking to the valuation made by the plaintiff the suit is valued U/Sec: 38(I) of Karnataka Court Fees and Suit Valuation Act and he made the valuation of the suit property at Rs.1,000/- and paid necessary Court Fee, but as per the provisions of Sec: 24(A) of the Karnataka Court Fees and suit Valuation Act, the plaintiff has to pay the Court Fee ^{on the} and Valuation mentioned in the sale deed and when the plaintiff has come-up with specific case that the sale deed execution on 18/06/2004 is not binding upon him and sale deed is to be cancelled. So the plaintiff has to be pay the necessary Court fee of ~~an~~

2/6/2007

Rs. 1,00,000/- as the relief sought in the suit that the sale deed is not binding upon him. But the plaintiff has valued the suit property only Rs.1,000/-.

Hence the plaintiff has not paid proper Court Fee of cancellation of the sale deed alleged to be executed by misrepresenting himself as plaintiff and executed sale deed in favour of defendant No.1.

Hence the plaintiff has not paid the proper Court fee as per the Section: 24(A) of the Karnataka Court Fees and Suit Valuation Act and apart from it the valuation mentioned in Ex.P1 is Rs. 1,00,000/- .

Hence, this Court has not pecuniary jurisdiction to try the suit itself. Though the plaintiff has stated in his plaint, the valuation of the suit is at Rs. 1,000/-, but when the plaintiff has sought for the specific relief of cancellation of sale deed the valuation mentioned in the sale deed is to be taken-into consideration , but unfortunately plaintiff has not valued the suit properly and as such the plaintiff suit itself is not tenable before this Court. Hence this Court has no jurisdiction

12/6/2009

to try the above suit and as such the plaintiff has not entitled for the relief of declaration as sought for in the suit. Hence these points are answered in the Negative.

11. Issue No.5: The plaintiff has sought for the relief of injunction against the defendant No.1 and 2 and though defendant No.1 appeared through his counsel, but not chosen to file the written statement. The plaintiff has deposed in his evidence that I have not executed any sale deed on 18/6/2004, but defendant No.1 and 2 have cultivated with each other and manipulated a document styled as sale deed and defendant No.1 has misrepresented himself as owner before registering authority and got registered the document, absolutely except the evidence of PW.1 the plaintiff has not led any independent evidence to show that the defendant No.2 has misrepresented himself as a plaintiff. The plaintiff could have examined the independent witnesses who are signatories to Ex.P1; sale deed. The plaintiff has produced the RTC extract

FS
12/6/2005

under Ex.P2. Looking to the Ex.P2 the name of defendant No.1 is entered in coloumn No: 9 of RTC and in column No: 12, the name of Yallappa Kagi and Sangappa Birajanavar is found . Hence only on the basis of Ex.P2 it cannot be said that the plaintiff is in possession of the property. Though the defendants are not chosen to file the written statement , but when the plaintiff ^{knowledge} has approached approach to the Court , he has to prove that the defendants are ~~inform~~ interfere with his possession, but except the bear statement of the plaintiff, plaintiff has not examined any adjacent persons to show that the defendants are interefere with the possession. Hence I am ofthe considered opinion that when the plaintiff has failed to prove that the sale deed is executed by defendant No.2 by misrepresenting himself as plaintiff. Hence the plaintiff is not entitled for the perpectual injunction against the defendant\$, Hence I answer this point in the Negative .

FSR
12/6/2009

12. Point No.6: In view of the detail discussion and findings on Point No.1 to 5 I proceed to pass the following:

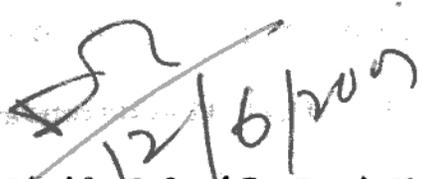
ORDER

Suit of the plaintiff is dismissed.

No order as to costs.

Draw decree accordingly.

(Dictated to the stenographer transcribed by her corrected by me then pronounced in the Open Court this the 13th Day of June 2007)


Pril., Civil Judge (Jr. Dn.) Mudhol.

ANNEXURE

LIST OF THE WITNESSES AND DOCUMENTS GOT MARKED

BY THE PLAINTIFF SIDE:

PW.1: Yallappa Siddappa Kagi.

Ex.P1: Certified Copy of Sale deed.


12/6/2007

Ex.P2: R of R extract of R.S.No:211/4B/2.

Ex.P3: Ration Card.

Ex.P4: Identity Card.

LIST OF THE WITNESSES AND DOCUMENTS MARKED
BY THE DEFENDANT SIDE:

-Nil-


12/6/200
Pril. Civil Judge (Jr. Dn.)
Mudhol.

Decree in Original Suit

O. 20, R 6, 7 of CPC.

In the Court of P&P Civil Judge (Jr. On)
Mudhol.

O. S. No- 311/06

Date of Institution- 18-10-2006

Date of disposal- 12-06-2007.

1. Sri. Yallappa. s/o Suddappa. Kagi.

Age- 78 yrs, ou- Agriculture,

R/o- Belagali, Tq- Mudhol.

..... plaintiff.

vs.

1. Sri. Sangappa. s/o Balachandra. Birajanavar.

Age- 21 years, ou- Agriculture,

R/o- Belagali, Tq- Mudhol.

2. Suddappa. s/o Suddappa. Kagi.

Age- 65 years, ou- Agriculture,

R/o- Belagali, Tq- Mudhol.

..... Defendants.



Nature of suit - suit for declaration and consequential relief of injunction.

Prayer - Plaintiff prayed that, the decree for declaration be passed in favour of plaintiff declaring the plaintiff as owner in possession of suit land bearing R.S. no 211/4B/2, by cancelling the alleged sale deed dt-18-06-04 executed by defendant no-2, in favour of defendant no-1 pertaining to R.S. no 211/4B/2 measuring 1 Acre-05 auntas of Belagali village as null void. As consequential relief decree be passed restraining the defendant no-1 from obstructing or causing obstruction to the peaceful possession and enjoyment of suit property by the plaintiff, cost of suit awarded to the plaintiff.

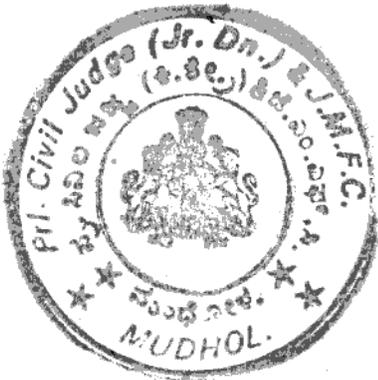


This suit is coming on this 12th day of June 2007 for final disposal before Sri. M. C. Nadagouda. M. Com. LLB P&P Civil Judge (Jr. Dn) Mudhol, in the presence of Sri. I. H. Amb. Advocate for Plaintiff and Sri. P. M. Vastrad Advocate for Defendant no-1, and defendant no-2 being placed ex parte. It is here by ordered and decreed that-

Suit of the plaintiff is dismissed.
 No order as to costs.

Given under my hand and seal of the court on this 12th day of 2007.

[Signature]
 The Prit Civil Judge (Jr. Dn)
 Mudhol.



Bill of Costs.

Particulars	Cost by Pkt.	Cost by Deft
1. C.F paid on plant	25=00	-
2. C.F paid on power.	-	-
3. C.F paid on EAT	-	-
4. Process fees	30=00	-
5. Advocates fees.	FC not filed	FC not filed.
Total	55=00	-

Prepared by

[Signature]

FDA.

verified by

[Signature]

SHEKISTEDAR

**Pri. Civil Judge (Jr Divn)
& J. M. F. C. Court Mudhol**

Draft decree notified

on 15-06-07

~~no objection of Home~~

Decree signed

on 19-06-07.

[Signature]
19/6/2007
**The Pri. Civil Judge (Jr. Dn)
Mudhol**

valuation - As the suit is for declaration and consequential relief of injunction,

is valued U/s 38 R/W Sec 7(2) of

As the subject matter of this



bounded by -

Towards East - Sengappa. Biraganavar land
(Deft - 1)

Towards West - Land of Lakkeppa. Kurbar.

Towards South - Plaintiff's another land

Towards North - Plaintiff's another land.

~~The Principal Judge (Jr. Dn)
Madhol.~~


(I. H. Ambi)
Advocate for plaintiff


(P. M. Venstrad)
Advocate for D-1

 placed ex parte.