

IN THE COURT OF THE ADDL. CIVIL JUDGE, MUDHOL,

AT: MUDHOL.

PRESENT: Sri Ajit Devaramani. B.Sc.,LL.B.

ADDL. CIVIL JUDGE, MUDHOL.

OS. No.274/2013

DATED THIS THE 18th DAY OF DECEMBER -2018.

1. Sri. Ameensab Abbas Kodati,
Age: 65 years, Occ: Coolie,
R/o: Mudhol Dist : Bagalkot
Died his L.R's brought on record
- 1A) Smt. Hasina W/o Husensab Galgali
Age : 40 years, Occ: Household work,
R/o: Kaluti nagar, Terdal, Tq : Jamkhandi.
- 1B) Smt. Nasima W/o Maiboobsab Gaddi,
Age : 33 years, Occ: Household work,
R/o: Tippusulthan Galli, Mudhol, Dist : Bagalkot
- 1C) Abbas Ameensab Kodati,
Age : 30 years, Occ: Agriculture,
R/o: Killa Galli, Mudhol Dist : Bagalkot
- 1D) Smt. Salma W/o Rafiq Yamakanamardi
Age : 26 years, Occ: Household work,

R/o: Momin Galli, Jamkhandi Dist : Bagalkot

2. Roshanabi W/o Ismail Kodati

Age : 50 years, Occ: Household work,

R/o: Mudhol Dist : Bagalkot

3. Aminuddin Hajaratsab Kodati

Age : 56 years, Occ: Trailor

R/o: Mudhol Dist : Bagalkot

...plaintiffs

(By : Sri H.A.K. Advocate)

V/s

1) Ibrahim Mahiboobsab Kodati

Age : 65 years, Occ: Retired SBI worker

R/o: Rameshwar Colony, Jamkhandi.

Died, his L.R's brought on record

1A) Smt. Banu W/o Ibrahim Kodati

Age : 60 years, Occ: Household work,

1B) Mahammadgous S/o Ibrahim Kodati

Age : 37 years, Occ: Doctor,

1C) Rafik S/o Ibrahim Kodati

Age : 35 years, Occ: Mestri

1D) Ayub S/o Ibrahim Kodati

Age : 32 years, Occ: Business.

- 1E) Jakirhusen S/o Ibrahim Kodati
Age : 30 years, Occ: Business
All are R/o Rameshwar Colony, Jamkhandi.
- 2) Budansab Nabisab Kodati
Age : 70 years, Occ: Retired Village Accountant.
R/o : Near Danamma Temple, Jamkhandi.
- 3) Smt. Husenbi W/o Kutbuddin Kodati
Age : 45 years, Occ: Household work,
R/o : Laxmi Nagar, Jamkhandi.
- 4) Imamsab Fakrusab Kodati
Age : 70 years, Occ: Coolie,
R/o : Sadanand Colony, Jamkhandi.
- 5) Peerasab Fakrusab Kodati
Age : 60 years, Occ: Coolie,
R/o : Near Abubkar Darga, Jamkhandi.
- 6) Fakrusab Husensab Kodati
Age : 57 years, Occ: Coolie,
R/o : Pendari Galli, Jamkhandi.
- 7) Saleem Husensab Kodati
Age : 50 years, Occ: Mestri.
R/o : 100 ft. road, Gajal Battery, Sangali (Maharashtra)
- 8) Ayub Husensab Kodati

Age : 52 years, Occ: Coolie,
R/o : Katati plot, Jamkhandi

9) Musa Husensab Kodati

Age : 48 years, Occ: Coolie,
R/o : Shanti nagar, Jamkhandi.

10) Haroon Husensab Kodati

Age : 40 years, Occ: Mestri.
R/o: Pendari Galli, Jamkhandi.

.....Defendants

(D-1(a to e) : By Sri. I.H.S.Adv)

(D-2,3,6,9 : Exparte)

(D-4, 5, 7, 8, 10 : By Sri. N.B.H. Adv.)

Date of Institution of the suit	:	18-09-2013		
Nature of the suit	:	Declaration & Permanent Injunction		
Date on which the judgment is pronounced	:	18-12-2018		
Total duration	:	Year/s	Month/s	Day/s
		05	03	00

: JUDGMENT :

This suit is filed by the plaintiffs against the defendants for the relief of declaration to declared that plaintiffs and defendant

No.1(a) to (e) are the joint owners of the suit property and for permanent injunction of the suit property.

2. Description of the suit property:

Description	Measuring	Assessment	Situated
R.S No: 546/1	08-00 <u>3-33-K</u> 04-07	0=71	Mudhol, TQ: Mudhol

Hereafter, referred to as suit property.

3. Brief facts of the plaintiffs are as follows:

In the plaint the plaintiffs have averred that the plaintiffs are the joint owners and in possession of the suit property, the suit property is ancestral property. After the death of their ancestors the plaintiffs have continued their joint possession over the suit property. When the father of the plaintiff No.3 went to the Mahalingapur for the coolie work, taking disadvantage of this defendants have entered their names into records of the suit property. When the plaintiffs have recently verified the documents of the suit property It is revealed that defendant No. 2 to 10 unlawfully entered to their names into records of the suit

property. Further contended that, the defendants are interfering in the peaceful possession and enjoyment of the suit property over by the plaintiffs. Hence plaintiffs have filed this suit for declaration and permanent injunction.

4. In pursuance to suit summons defendant No.1(a) to (e) appeared through their counsel and filed Written Statement and counter claim. The defendant No.2, 3, 6 & 9 placed exparte. The defendant No.4, 5, 7, 8, 10 though appeared through their counsel but have not filed written statement. The defendant No.1(a) to (e) in their statement admitted the averments of the plaint and filed counter claim that they are having 1/3rd share in the suit property. The defendant No.1(a) to (e) contended that originally propositus Gousamoddin Kodati and his widow died intestate leaving behind his 3 sons by name (1) Abbas (2) Mehaboob and (3) Hajaratasab all three sons also died. The eldest son Abbas died leaving behind him two sons by name Aminasab plaintiff No.1 who died during pendency of this suit his L.R's are 1(a) to 1(d) 2nd son Ismail died survived by his wife Roshanbi

(plaintiff No.2) Another son Mehaboobsab died succeeded by his lonely son Ibrahim defendant No.1 since dead and his L.R's are defendant No.1(a) to 1(e). Third son by name Hajarasatab died survived by his son Aminoddin plaintiff No.3. These defendants are jointly having $1/3^{\text{rd}}$ share suit property like wise plaintiff No.1 & 2 are having $1/3^{\text{rd}}$ share plaintiff No.3 is having $1/3^{\text{rd}}$ share in the suit land. These defendant No.1(a) to 1(e) demanded their lawful joint $1/3^{\text{rd}}$ share in the suit property the plaintiffs and rest of the defendants flatly refused to effect partition and to allot the lawful share to these defendants. Hence these defendants are constrained to filed the counter claim.

5. On the basis of above pleadings I have framed a following issues.

ISSUES

1. Whether the plaintiff proves that themselves and defendants are absolute joint owners and in possession of suit land ?

2. Whether plaintiff proves alleged interference ?
3. Whether defendant No.1(a) to 1(e) prove that, they are entitled for 1/3rd share in the suit property as per their counter claim mentioned in para No.7 of their written statement ?
4. Whether plaintiffs are entitled for the relief ?
5. What order or decree ?
6. In order to prove the case of the plaintiff No.3 himself examined as PW.1 and got marked one document as Ex.P.1. Similarly on the other hand defendants defendant No. 1(b) himself examined as DW.1 but not produced any documents.
7. I have heard the arguments of both the sides and perused the materials available on record.
8. After going through the pleadings, evidence, as well as arguments of both the parties, I answers to above issues are as follows.

Issue No.1 :- In Affirmative

Issue No.2 :- In Affirmative

Issue No.3 :- In Affirmative

Issue No.4 :- In Affirmative

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

-: REASONS :-

9. **Issue No.1 to 4:** These four issues are interconnected which each other hence, I have taken up these four issues for common discussion, to avoid repetition of facts and appreciation of evidence.

Burden is on the plaintiff to prove issue No.1, 2 & 4. Burden is on the defendant No.1(a) to 1(e) to prove issue No.3.

10. In order to prove the case of plaintiffs, the plaintiff No.3 himself examined as PW.1, in their affidavit filed in lieu of Chief-examination he has reiterated the averments of the plaint and got marked one document as Ex.P-1 i.e. RTC of Sy.No. 546/1. During cross examination he admitted that suit property is ancestral property and also admitted that there was no partition earlier in respect to the suit property. The plaintiff and defendant No.1(a) to 1(e) are in joint possession of the suit property. Further admitted

that plaintiff No.1& 2 are having 1/3rd joint share, defendant No.1(a) to 1(e) are having 1/3rd joint share, plaintiff No.3 is having 1/3rd share and also admitted that defendant No.2 to 10 are not the owners of the suit property and they are not having any right, title, interest in the suit property. The defendant No.2 to 10 unlawfully entered their names into records of the suit property. The defendant No.2 to 10 are having in possession of the suit property.

11. On the other hand the defendant No.1(b) himself examined as DW-1. He deposed on behalf of defendant No.1(a) to 1(e) in his examination chief he reiterated the averments of written statement and specifically deposed that defendant No.2 to 10 are not having right, title interest over the suit property. The defendant No.1(a) to 1(e) having 1/3rd joint share in the suit property. In the cross examination he admitted the case of plaintiff, suit property is ancestral property. The defendant No.2 to 10 are not having any right, title, interest over the suit property.

Further admitted that defendant No.2 to 10 are not having any share in the suit property.

12. In this case the defendant No.2, 3, 6 & 9 are placed exparte. The defendant No.4, 5, 7, 8, 10 though appeared through their counsel, but have not filed written statement. On perusal of oral and documentary evidence it clearly shows that the plaintiffs and defendant No.1(a) to 1(e) are the joint owners and in possession of the suit property. The evidence of the plaintiffs and defendant No.1(a) to 1(e) have not been challenged by other defendants. Hence I have no hesitation to accept the case of the plaintiffs and countert claim of the defendants. More over in this case defendant No.2 to 10 have not placed any oral and documentary evidence to show that they are owners of the suit property. Hence, I am considered opinion that plaintiffs and defendant No.1(a) to 1(e) are joint owners and in possession of the suit property. Hence, I answer Issue No.1 to 4 in **affirmative**.

13. **Issue No.5:** For the aforesaid reasons, I proceed to pass the following:

ORDER

The suit of the plaintiffs is hereby decreed.

Consequently it is hereby declared that plaintiffs and defendant No.1(a) to 1(e) are joint owners and in possession of the suit property.

The defendant No.2 to 10 are hereby permanently restrained from interfering in the peaceful possession and enjoyment of the suit property by the plaintiffs and defendant No.1(a) to 1(e).

The counter claim of the defendant No.1(a) to 1(e) is hereby decreed.

The defendant No.1(a) to 1(e) are entitled for 1/3rd share in the suit property, the plaintiff No.1(a) to (d) and plaintiff No.2 are jointly entitled for 1/3rd share in the suit property. The plaintiff No.3 is entitled for 1/3rd share in the suit property.

Draw preliminary decree accordingly.

(Dictated to the Stenographer, transcribed and typed by her; corrected, signed and then pronounced by me in the Open Court this the 18th DAY OF December -2018)

(Ajit Devaramani)
ADDL. C J & JMFC., MUDHOL.

A N N E X U R E

List of witnesses examined on behalf of plaintiffs:

PW.1 :Sri Aminuddin Hajaratsab Kodati

List of documents marked on behalf of plaintiffs:

Ex.P-1 :RTC extract of R.S No.546/1

List of witnesses examined for defendants:

DW-1 :Mahammadgousa S/o Ibrahim Kodati

List of documents marked for defendants:

---NIL---

ADDL. CJ & JMFC, MUDHOL.

(Vide separate judgment pronounced in the open court)

-O R D E R-

The suit of the plaintiffs is hereby decreed.

Consequently it is hereby declared that plaintiffs and defendant No.1(a) to 1(e) are joint owners and in possession of the suit property.

The defendant No.2 to 10 are hereby permanently restrained from interfering in the peaceful possession and enjoyment of the suit property by the plaintiffs and defendant No.1(a) to 1(e).

The counter claim of the defendant No.1(a) to 1(e) is hereby decreed.

The defendant No.1(a) to 1(e) are entitled for 1/3rd share in the suit property, the plaintiff No.1(a) to (d) and plaintiff No.2 are jointly entitled for 1/3rd share in the suit property. The plaintiff No.3 is entitled for 1/3rd share in the suit property.

Draw preliminary decree accordingly.

(Ajit Devaramani)
ADDL. CIVIL JUDGE, MUDHOL.

