

KABK710000452019



O.S./3/2019

{CASE_CAUSE_TITLE}

**IN THE COURT OF PRINCIPAL CIVIL JUDGE &
JMFC, JAMKHANDI, AT: JAMKHANDI**

PRESENT :

SRI ABDUL RAHIMAN. A. MULLA

B.A.L, LL.B. (Hons.)

**Prl. Civil Judge & JMFC,
Jamkhandi.**

Dated this 13th day of January- 2023

O. S. No.3/2019

1. Timmappa S/o Adivappa Biradar,
Age: 84 years, Occ: Agriculture,
R/o Albal, Tq: Jamkhandi, Dist: Bagalkot.

..... Plaintiff.

(By Sri.RRK/SBB., Advocates)

V/s.

1. The State of Karnataka,
Represented by Deputy Commissioner,
Bagalkot.
2. Panchayat Development Officer,
Gram Panchayt, Muttur,
Tq: Jamkhandi, Dist: Bagalkot.
3. Mahadevi W/o Shankar Biradar,
Age: 56 years, Occ: Household work,
R/o Albal, Tq: Jamkhandi, Dist: Bagalkot.

4. Anand S/o Shankar Biradar,
Age: 35 years, Occ: Agriculture,
R/o Albal, Tq: Jamkhandi, Dist: Bagalkot.
5. Nagaraj S/o Shankar Biradar,
Age: 31 years, Occ: Agriculture,
R/o Albal, Tq: Jamkhandi, Dist: Bagalkot.
6. Mahadev S/o Malkappa Biradar,
Age: 61 years, Occ: Agriculture,
R/o Albal, Tq: Jamkhandi, Dist: Bagalkot.
7. Durgappa S/o Hanamant Mang @ Madar,
Age: 50 years, Occ: Coolie,
R/o Albal, Tq: Jamkhandi, Dist: Bagalkot.
8. Smt.Satyawwa W/o Ramachandra Kamble,
Age: 52 years, Occ: Household work,
R/o Albal, Tq: Jamkhandi, Dist: Bagalkot.

..... Defendants.

- (D-1 – By Sri.A.G.P., Advocate)
(D-2 – By Sri.S.P.D., Advocate)
(D-3 to D-7 – By Sri.C.S.B., Advocate)
(D-8 - Exparte)

I. A. No.VII

1. Timmappa S/o Adivappa Biradar,

..... Applicant/Plaintiff.

V/s.

1. The State of Karnataka,
Represented by Deputy Commissioner,
Bagalkot and 7 others.

.....Opponents/Defendants.

ORDERS ON I.A. No.VII FILED
BY PLAINTIFF UNDER ORDER 14 RULE 5
R/W SECTION 151 OF C.P.C

This suit is filed by plaintiff against defendants for the relief of declaration, consequential relief of permanent injunction, mandatory injunction and for possession and now when the case is posted for plaintiff's evidence, present application is filed by plaintiff praying this court to frame additional issues No.8 and 9.

2. The proposed additional issues to be framed are as under;

- 8) Whether defendant No.7 and his family members prove that suit property is part and parcel of their house property bearing VPC No.267 of Alabal village ?
- 9) Whether defendant No.7 and his family members prove that they are in actual possession and enjoyment of suit property?

3. In the affidavit annexed to the application, plaintiff averred that he has filed this suit to declare that he is absolute owner in possession of suit

property, decree for mandatory injunction and for possession. Defendant No.7 in his written statement at para No.19 and 20 has specifically pleaded that suit property is part and parcel of their house property bearing VPC No.267 of Albal village and suit property is situated back side of their house property. The defendant No.7 and his family members were and are in actual possession and enjoyment of the suit property. Hence as per pleading of written statement of defendant No.7, this court by oversight has not framed issues in respect of said pleading which goes to the root of the matter. If additional issue No.8 and 9 are framed, no prejudice will be caused to defendants and amongst these grounds, prayed to allow the application.

4. Defendant No.3 to 7 filed objections to the application contending that plaintiff is not the owner in actual possession of suit schedule property. There is no necessity to frame any additional issues as prayed

by plaintiff and to drag on the case unnecessarily present application is filed only to harass the defendants and amongst these grounds, prayed to dismiss the application with heavy costs. Defendant No.1 and 2 counsel submitted that they have no objection to allow the application.

5. Heard. Perused the records placed before the court.

6. The points that arise for my consideration is as under :

1. Whether plaintiff has made out sufficient grounds to allow the application?
2. What Order ?
7. My findings to the above points is as under :

Point No.1:- In the Negative

Point No.2:- As per final order for the following :

REASONS

8. **POINT No.1:-** Admittedly now when the suit is posted for evidence of plaintiff's side, present

application came to be filed by plaintiff praying this court to frame additional issues No.8 and 9 on the ground that on the pleading taken by defendant No.7 in his written statement, issues are not framed and if the proposed additional issues are framed, it will go to the very root of the matter. On the contrary, defendant No.3 to 7 filed objections contending that there is no necessity to frame any additional issues.

9. On perusal of records, present suit came to filed by plaintiff on 10-01-2019 and written statement came to filed by defendant No.2 on 30-05-2019 and defendant No.7 filed written statement on 26-08-2020 and based on the pleadings, my learned predecessor-in-office has framed in as many 7 issues on 11-05-2020, wherein Issue No.2 reads as “whether plaintiff proves that he is in lawful possession of suit property”?

10. Furthermore to the written statement filed by defendant No.7 in the first place, there is no

rejoinder filed by plaintiff. Further no counter claim has been claimed by defendant No.7 in his written statement praying this court to hold that he along with his family members are in actual possession and enjoyment of suit property by paying separate court fee. It is well settled principle of law that issues arise when one party asserts material proposition of fact or law and other party denies the same. When plaintiff has come before the court by asserting his plea, it is for him to plead and prove his case. Furthermore the proposed additional issue No.8 and 9 as prayed to be framed by plaintiff in the application is covered under Issue No.2, which is framed by my learned predecessor-in-office.

11. The proposed additional issues are nowhere necessary to adjudicate the matter in hand effectively and it appears that plaintiff might have filed this application only to drag the proceedings. No believable and sufficient grounds have been made out by plaintiff

to allow the application. Hence for the above said reasons, I answer Point No.1 in the 'Negative'.

12. **POINT No.2:-** For the reasonings and findings given to point No.1, I proceed to pass the following :

: O R D E R :

I. A. No.VII filed by plaintiff under Order 14 Rule 5 R/w Section 151 of C.P.C is hereby rejected.

Parties to bear their own costs.

*(Dictated to the Stenographer directly on computer and typed by him, and corrected, printout taken, signed by me and then pronounced in the open court on this the **13th day of January- 2023**)*

(Abdul Rahiman A. Mulla)
Prl. Civil Judge & JMFC,
Jamkhandi.