

**THE COURT OF SENIOR CIVIL JUDGE AND JMFC AT ANEKAL,**  
**BANGALORE RURAL DISTRICT**

Present: Sri. T. Govindaiah, B.Com., LL.B.,  
Senior Civil Judge, Anekal.

**O.S. No.2651/2006**

**Dated this the 21<sup>st</sup> day of March, 2017**

Plaintiff/s : Sri.Kenchappa @ Muniyappa,  
Since dead by Lrs.,

a) Sri.Arasappa,  
S/o Late Kenchappa @ Muniyappa,  
Aged about 52 years,

b) Smt.Munithayamma,  
D/o Late Kenchappa @ Muniyappa,  
W/o Sampangappa,  
Aged about 50 years,

c) Smt.Ramakka,  
D/o Late Kenchappa @ Muniyappa,  
W/o Chandrappa,  
Aged about 48 years,

d) Sri.Muniraju,  
S/o Late Kenchappa @ Muniyappa,  
Aged about 46 years,

All are residing at,  
Sidihoskote Village,  
Kasaba Hobli,  
Anekal Taluk,  
Bangalore District.

(Rept., by Sri.H.S)

V/s

Defendant/s : 1. Sri.K.C.Chandrashekara Raju,  
S/o Late V.S.Chagama Raju,  
Aged about 35 years,

2. Sri.K.C.Balakrishnaraju,  
S/o Late V.S.Chagama Raju,  
Aged about 30 years

Defendants No.1 and 2 are  
Residing at,  
No.933, 2<sup>nd</sup> Main,  
Diwanara Palya,  
Bangalore – 54.

3. Smt.K.C.Lakshmi,  
D/o Late V.S.Chagama Raju,  
Aged about 25 years,  
Residing at,  
No.1152, 14<sup>th</sup> Main,  
2<sup>nd</sup> Stage, West of Chord Road,  
Mahalakshampuram,  
Bangalore – 54.

4. Sri.Abdul Aleem,  
S/o Abdul Rasheed,  
Aged about 39 years,  
Residing at,  
No.11, Wellington Town Street,  
Richmond Town,  
Bangalore – 25.

5. Sri.M.Ujinappa,  
S/o Late Muniswamappa,  
Aged about 68 years,  
Residing at,  
Indlavadi Village,  
Kasaba Hobli,  
Anekal Taluk,  
Bangalore District.

(Rept., by Sri.V.S for  
D.4 and Sri.M.V.M for  
D.5 and D.1 to 3  
placed exparte)

Date of Institution of the suit : 24-11-2006  
Nature of Suit : Declaration and Permanent Injunction  
Date of commencement of  
Recording of the evidence : 14-09-2011  
Date of which the judgment  
was pronounced : 21-03-2017  
Total Duration : Years Month/s Day/s  
10 03 27

(T. Govindaiah)  
Senior Civil Judge,  
Anekal.

### **J U D G M E N T**

The plaintiff has filed the present suit against the defendants for seeking the relief of declaration of his ownership and declaration declaring that the sale deed executed by the defendants No.1 to 3 in favour of defendant No.4 dated 07.05.2004 is not binding on the plaintiff and permanent injunction in respect of suit property, for costs and other relief.

### **SCHEDULE PROPERTY**

**All the part and parcel of the property bearing Sy. No.75/4 measuring 1 acre 8 guntas, situated at Bagganadoddi Village, Kasaba Hobli, Anekal Taluk, Bangalore District.**

**2. The brief facts of the plaintiff's case are as under: -**

The plaintiff is the absolute owner and in possession of the suit property and the same was purchased by the plaintiff through its previous owner Muniswamappa of Indalavadi Village through the registered sale deed dated 02.05.1968. The name of the plaintiff also mutated in the RTC of the suit property. The plaintiff used to pay the tax in respect of suit property. Further, all the revenue documents are stand in the name of plaintiff. The plaintiff due to urgent need of money, he approached the PLD Bank and obtained the loan by pledging the suit property by executed the mortgage deed dated 22.11.1970. Thereafter, the plaintiff has repaid the entire loan amount and obtained the redemption of Mortgage Deed from PLD Bank. This being the facts, the plaintiff is in actual possession and enjoyment of the suit property as absolute owner. Recently, the plaintiff obtained the RTC of the suit property. But, the name of M.Ujinapa s/o Muniswamappa has been entered to the RTC of the suit property. When Muniswamappa himself alienated the suit property in favour of plaintiff, his son M.Ujinappa is no way concerned to the suit property and he has no right to enter the name in the RTC of the suit property. On the basis of the illegal entries in the RTC of the suit property, M.Ujinappa created the sale deed dated 27.10.1998

in favour of Chinnamma in respect of suit property. Therefore, the sale deed dated 27.10.1998 executed by M.Ujinappa in favour of Chinnamma is not binding on the plaintiff. Further, on the basis of the illegal sale deed, Chinnamma executed the registered Will in favour of Smt.S.K.Jayalakshmi @ Guramma on 06.07.1994. Thereafter, S.K.Jayalakshmi @ Guramma also executed the Will dated 31.01.2002 in favour of her husband namely Chagamaraju. Thereafter, Chagamaraju and his children have illegally alienated the suit property in favour of defendant No.4 through the sale deed dated 07.05.2004 and the same is not binding on the rights of the plaintiff over the suit property. Since beginning, the plaintiff is in actual possession and enjoyment of the suit property by virtue of the sale deed dated 02.05.1968. When Muniswamappa himself alienated the suit property in favour of plaintiff, his son M.Ujinappa is no way concerned to the suit property and he has no any right over the same. The defendants No.1 to 3 by colluding with each other, they have created the documents only with an intention to harass the plaintiff and to grab the property belongs to the plaintiff. On the basis of the illegal documents, now the defendant No.4 is trying to alienate the suit property in favour of 3<sup>rd</sup> parties. Hence, this suit.

3. On issuance of summons, the defendants No.1 to 3 remained absent and placed *exparte*. The defendant No.4 filed his written statement. In the written statement, the defendant No.4 denied all the averments of plaint as false. He also denied the ownership and possession of the plaintiff over the suit property. He also denied the sale deed dated 02.05.1968 in favour of plaintiff in respect of suit property. He further contended that defendants No.1 to 3 being the owners of the suit property, have alienated the same in favour of defendant No.4 for valuable consideration. Since the date of purchase, the defendant No.4 is in actual possession and enjoyment of the suit property. The defendant No.4 further contended that the suit of the plaintiff is hopelessly barred by law of limitation. There is no cause of action to this suit. All the revenue documents have been transferred in the name of defendant No.4 and defendant No.4 is in actual possession and enjoyment of the suit property as absolute owner. The plaintiff created the false documents. The said documents are no way establishes the ownership of the plaintiff over the suit property. Hence, he prays for dismissal of the suit.

4. On perusal of the above pleadings and contention of both parties, the following issues have been framed.

1. Whether the plaintiff proves that he is the absolute owner of the suit schedule property?
2. Whether the plaintiff proves that the sale deed executed by the defendants No.1 to 3 in favour of the defendant No.4 vide document No.BNG(U)ANKL.S.R.D.No.1809 /2004-05, dated 07.05.2004 is not binding on the plaintiff?
3. Whether the plaintiff is entitled for the relief of declaration and permanent injunction as prayed for?
4. Whether the 4<sup>th</sup> defendant proves that he is the absolute owner of the suit schedule property?
5. What order or decree?

5. During the pendency of this suit, the plaintiff was died and his Lrs., are brought on record. During the course of trial, the plaintiff No.1(d) himself examined as P.W.1 and 37 documents have been got marked as Ex.P.1 to 37 and two witnesses namely Ramaswamy and Motanna have been examined as P.W.2 and 3 and closed his side. After closure of the plaintiff's side evidence, the case was posted for defendants side evidence. The defendants have not lead any evidence in spite of sufficient opportunity given by the court. Lastly, the evidence on behalf of the defendants taken as nil.

6. Heard arguments on both sides.

7. Perused the oral and documentary evidence placed before the court.

8. My findings on the above issues are as follows:-

Issue No.1	: In the Affirmative
Issue No.2	: In the Affirmative
Issue No.3	: In the Affirmative
Issue No.4	: In the Negative
Issue No.5	: As per final order for the following;

### **REASONS**

9. **Issue No.1** : - As stated above, the plaintiff filed the present suit against the defendants for seeking the relief of declaration of his ownership over the suit property and declaration declaring that the sale deed dated 07.05.2004 executed by the defendants No.1 to 3 in favour of defendant No.4 is not binding on the rights of the plaintiff over the suit property. In order to prove the plaintiff's case, plaintiff No.1(d) has been examined as P.W.1 and 37 documents have been got marked as Ex.P.1 to 37. In the affidavit evidence of P.W.1, he clearly and unequivocally states that his father original plaintiff purchased the suit property from its lawful owner namely Muniswamappa through the registered sale deed dated 02.05.1968. On the basis of the sale deed dated 02.05.1968, all the documents

have been mutated in the name of the plaintiff. The plaintiff used to pay the tax in respect of suit property. Further, due to urgent need of money, the plaintiff also pledged the suit property in favour of PLD Bank and executed a Mortgage Deed dated 22.11.1970. Thereafter, the plaintiff repaid the mortgage loan amount and redeemed the Mortgage Deed by obtaining redemption of the Mortgage Deed in favour of plaintiff. This being the facts, the plaintiff is in actual possession and enjoyment of the suit property. But, one M.Ujinappa s/o Muniswamappa illegally entered his name to the revenue records of the suit property. On the basis of the illegal entries, they have created so many documents and on the basis of the created documents, the defendants No.1 to 3 have illegally alienated the suit property in favour of defendant No.4 through the sale deed dated 07.05.2004. On the basis of the illegal documents, now the defendant No.4 is trying to alienate the suit property only with an intention to harass the plaintiff.

10. In support of the say of P.W.1, he produced the registered sale deed dated 02.08.1968, Patta Book, Tax Paid Receipts, RTC of the suit property, records of rights, index of land, encumbrance certificate, redemption of Mortgage Deed, MR copy, sale deed,

encumbrance certificate, another sale deed dated 02.05.2004 and MR copy of the suit property as per Ex.P.1 to 37.

11. Further, in support of the case of plaintiff, the plaintiff also examined Ramaswamy and Motanna as per P.W.2 and 3. In the evidence of P.W.2 & 3, they have also states that the plaintiffs are the absolute owner and in possession of the suit property. Original plaintiff namely Kenchappa @ Muniyappa purchased the suit property through the sale deed dated 02.05.1968 from its lawful owner. Since the beginning, the plaintiff is in actual possession and enjoyment of the suit property as absolute owner.

12. It is important to note that the plaintiff contended that he purchased the suit property through the sale deed dated 02.05.1968 from its lawful owner namely Muniswamappa. On the basis of the sale deed dated 02.05.1968, his name has been mutated to the revenue records of the suit property. In support of the say of P.W.1, he also produced the sale deed dated 02.05.1968 as per Ex.P.1, tax paid receipts, patta book and RTC of the suit property as per Ex.P.2 to 4, wherein the name of the plaintiff is appeared as owner and possessor of the suit property. Further, the plaintiff also pledged the

suit property in favour of PLD Bank and obtained the loan in the year 1970. Thereafter, he redeemed the mortgage and obtained the redemption of Mortgage Deed by repaying the entire loan in favour of PLD Bank. On perusal of the Ex.P.1, it is clear that the owner of the suit property i.e., vendor of the plaintiff namely Muniswamappa alienated the suit property in favour of plaintiff through the sale deed dated 02.05.1968. When Muniswamappa alienated the suit property in favour of plaintiff by executing the sale deed dated 02.05.1968, his son M.Ujinappa has no right, title much less possession over the suit property. When vendor of the plaintiff namely Muniswamappa alienated the suit property, the children of Muniswamappa have not succeeded the suit property. When Muniswamappa alienated the suit property in favour of plaintiff by executing the sale deed dated 02.05.1968, the question of succession by M.Ujinappa does not arise. But, after executing the sale deed dated 02.05.1968 in favour of plaintiff, the son of Muniswamappa namely M.Ujinappa entered his name to the revenue records of the suit property by concealing the material facts. On the basis of the illegal entry, he alienated the suit property in favour Chinnamma through the sale deed dated 27.10.1988. Therefore, M.Ujinappa has no right to execute the sale

deed dated 27.10.1988 in favour of Chinnamma. Because on the basis of the sale deed dated 02.05.1968, the plaintiff purchased the suit property and became the absolute owner of the suit property. Therefore, M.Ujinappa s/o Muniswamappa is no way concerned to the suit property and he has no right to execute the sale deed in favour of Chinnamma that too in the year 1988. After lapse of 20 years from the date of executing the sale deed dated 02.05.1968, due to the illegal acts of M.Ujinappa s/o Muniswamappa, so many documents have been created in respect of suit property. Thereafter, the defendants No.1 to 3 have entered their names to the RTC of the suit property on the basis of Will dated 31.01.2002. On the basis of the illegal entry, the defendants No.1 to 3 have alienated the suit property in favour of defendant No.4 by executing the sale deed dated 07.05.2004. When the original owner Muniswamappa himself alienated the suit property in favour of plaintiff, the defendants No.1 to 3 have not obtained the valid title in respect of suit property. Further, on the basis of the sale deed dated 07.05.2004, the defendant No.4 also not got valid title over the suit property. Because the sale deed dated 02.05.1968 in favour of plaintiff is earlier sale deed. Ex.P.1 to 37 and oral evidence of P.W.1 to 3 would clearly

establish the ownership and possession of the plaintiff over the suit property.

13. It is important to note that though the defendant No.4 took various contentions in his written statement, he has no any defence to prove his contentions. Under such circumstances, the contention of the defendant No.1 remained as only contentions but not proved by producing believable evidence. Therefore, the plaintiffs have proved their ownership and possession by producing oral and documentary evidence. Accordingly, Issue No.1 is answered in the Affirmative.

14. **Issue No.2** :- The plaintiff further contended that the sale deed dated 07.05.2004 executed by the defendants No.1 to 3 in favour of defendant No.4 is not binding on the rights of the plaintiff over the suit property. As discussed above, the original owner of the suit property namely Muniswamappa himself alienated the suit property in favour of plaintiff by executing the sale deed dated 02.05.1968. When Muniswamappa himself alienated the suit property in favour of plaintiff, the children of Muniswamappa have not succeeded the suit property and they have not got any right over the suit property. Under such circumstances, M.Ujinappa s/o

Muniswamappa has no right to execute the sale deed dated 27.10.1988 in favour of Chinnamma. Thereafter, the defendants No.1 to 3 are also no way concerned to the suit property and they have no right to execute the sale deed dated 07.05.2004 in favour of defendant No.4. The defendant No.4 by colluding with each other, they have created the sale deed dated 07.05.2004. Therefore, the sale deed dated 02.05.1968 clearly establishes the ownership and possession of the plaintiff over the suit property. Accordingly, the sale deed dated 07.05.2004 executed by the defendants No.1 to 3 in favour of defendant No.4 is not binding on the rights of the plaintiff over the suit property. Accordingly, Issue No.2 is answered in the Affirmative.

15. **Issue No.4** :- The defendant No.4 contended that he is the absolute owner and in possession of the suit property. In the written statement, the defendant No.4 contended that he is the absolute owner of the suit property. But, he has not lead evidence to prove his contentions. Under such circumstances, the contention of the defendant No.4 is remained as only contentions but not proved by producing consistent and cogent material evidence. Accordingly, Issue No.4 is answered in the Negative.

16. **Issue No.3** :- As discussed above, the plaintiff has proved his ownership and possession over the suit property and he is also proved and established that the sale deed dated 07.05.2004 executed by the defendants No.1 to 3 in favour of defendant No.4 is not binding on the plaintiff. When the plaintiff has proved the above said facts, naturally he is entitled for the relief as claimed in the plaint. Accordingly, Issue No.3 is answered in the Affirmative.

17. **Issue No.5** :- In view of the above findings on Issues No.1 to 4, this court proceeds to pass the following;

### **ORDERS**

**The suit of the plaintiff is decreed with cost.**

**It is further decreed and declared that the plaintiff is the absolute owner and in possession of the suit property.**

**Further, it is decreed and declared that the sale deed dated 07.05.2004 executed by the defendants No.1 to 3 in favour of defendant No.4 in respect of suit property vide Document No.BNG(U)ANKL.S.R.D. No.1809/04-05 dated 07.05.2004 is not binding on the plaintiff.**

**Further, the defendant No.4 and any persons on his behalf are permanently restrained from alienating the suit schedule property in favour of any third persons by an order of permanent injunction.**

**Draw decree accordingly.**

(Dictated to the stenographer, transcribed by him, corrected by me and then pronounced in the open court on this 21<sup>st</sup> day of March, 2017).

(T. Govindaiah)  
Sr. Civil Judge,  
Anekal.

### **ANNEXTURE**

#### **List of witnesses examined for the plaintiff;**

P.W.1 : Muniraju  
P.W.2 : Ramaswamy  
P.W.3 : Motanna

#### **List of documents marked for the plaintiff;**

Ex.P.1 : Sale Deed  
Ex.P.2 : Receipt Patta  
Ex.P.3 : Receipt Patta  
Ex.P.4 : RTC Extract  
Ex.P.5 & 6 : Index of Land and Records of Right  
Ex.P.7 & 8 : Encumbrance Certificates  
Ex.P.9 : Redemption Deed  
Ex.P.10 to 14 : RTC Extracts  
Ex.P.15 : Mutation Extract  
Ex.P.16 : RTC extract  
Ex.P.17 : Sale deed  
Ex.P.18 : Mutation Extract  
Ex.P.19 : RTC extract  
Ex.P.20 : Mutation Extract  
Ex.P.21 to 27 : RTC extracts  
Ex.P.28 : Sale deed

Ex.P.29 : Mutation Extract  
Ex.P.30 : Encumbrance Certificate  
Ex.P.31 to 35 : RTC Extracts  
Ex.P.36 & 37 : Encumbrance Certificates

**List of witnesses examined for the defendants;**

NIL

**List of documents marked for the defendants;**

NIL

Sr. Civil Judge,  
Anekal