

IN THE COURT OF ADDITIONAL CIVIL JUDGE AND

J.M.F.C.,

AT DODDABALLAPURA

PRESENT: Smt. Mamatha Shivapuji, B.A.L., LL.M.,
Addl. Civil Judge & J.M.F.C., Doddaballapura
Bengaluru Rural District

Dated This the 15th Day of November 2021

ORIGINAL SUIT NO.128/2016

PLAINTIFFS

: **Sri. Rajanna**
S/o Late Sri. Papanna,
56 years,
R/at Shravanoor Village,
Doddabelavangala Hobli,
Doddaballapura Taluk.
since dead by LRs,

(By. Sri.T.N.B., Advocate)

V/s.

DEFENDANT/S

: **1. Smt. Muthamma**
W/o Late Sri.
Chikkahanumantharayappa,
Aged about 55 years,

2. Sri. Harish Kumar
S/o Late Sri.
Chikkahanumantharayappa,
Aged about 20 years,

3. Sri. Puttaraju
S/o Late Sri.
Chikkahanumantharayappa,
Aged about 35 years,

All are R/at of Shravanoor
Village,

Doddabelavangala Hobli,
Doddaballapura Taluk.

(By Sri. K.N.S., Advocate)

Date of institution of the suit : 30-04-2016

Nature of the suit : **Declaration**

Date of the commencement of
recording evidence : 29-10-2018

Date on which the Judgment
was pronounced. : 15-11-2021

Total duration : Year/s Month/s Day/s
05 06 15

(Mamatha Shivapuji)
Addl. Civil Judge & J.M.F.C.,
Doddaballapura

J U D G M E N T

The plaintiffs have filed the suit against defendants seeking for Declaration in respect suit schedule property.

2. The plaint averments in brief are as under:

The plaintiff is the absolute owner of the land in Sy.No.53/5 of Shravanoor, Doddaballapura Taluk. The plaintiff is in possession of the suit schedule property having katha transferred in his name and paying tax. The suit schedule property was originally ancestral joint family

property of plaintiff. Under Panchayath Parikath on 15-01-1990 suit schedule property was allotted to the share of plaintiff's father. After death of plaintiff's father plaintiff has inherited same and he is in possession. The defendant No.1 in the year 2003 offered the plaintiff to exchange the properties with other survey numbers. But it was not done so. The father of defendant's passed away in 13 years ago. When plaintiff obtained the revenue records of suit schedule property in the year 2013 he got to know that his name is missing in the R.T.C. extracts. The name of husband of defendant No.1 has been substituted. Plaintiff approached revenue authority but it was advised to get declaration of title by the civil court. The defendants taking advantage of katha in their names threatening the plaintiff to dispossess from the suit schedule property. Hence the plaintiff is left with no other alternative expect to approach this court. Hence, the plaintiff has filed the present suit.

3. Even though defendants appeared before this court through their counsel but failed to contest the case of plaintiff by filing written statement. It is noticed that when the case was posted for judgement on 27-09-2021 defendants came up with application under section 151 of C.P.C. seeking to receive written statement. This court after hearing both parties has rejected the application filed by the defendant on merits. Hence written statement of defendants is taken as not filed.

4. Perused the plaint averments. The following points that arise for consideration are as follows.

- 1) Whether the plaintiff proves that he is absolute owner of the suit schedule property?
- 2) Whether the plaintiff proves that he is in peaceful possession of the suit schedule property?
- 3) Whether the plaintiff proves that defendants are interfering with the possession of plaintiff over the suit schedule property?
- 4) Whether the plaintiff is entitled for the relief of Declaration and permanent Injunction as sought in the prayer?
- 5) What Order or Decree?

5. In order to prove the plaintiff's case, plaintiff has filed affidavit in lieu of chief examination and examined himself as P.W-1 and marked Ex.P-1 to Ex.P-7 documents. There is no evidence on behalf of the defendants since they have failed to file written statement within stipulated time.

6. Heard arguments of plaintiff's counsel, Perused records, answer to the above points for consideration as under:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

Point No.4 : In the Affirmative

Point No.5 : As per the final order for the following;

REASONS

7. **Point No.1 to 4:** Since these issues are interrelated, they are taken together for discussion to avoid repetition of facts and reasons.

8. In order to prove the plaintiff case, plaintiff has filed examination in chief by way of affidavit and examined himself as P.W-1 and marked Ex.P-1 to Ex.P-7 documents. Chief examination affidavit is nothing but the reiteration of plaint averments. Ex.P-1 is the Registered sale deed dated:14-04-1965. It is noticed that by oversight serial number Ex.P-2 was not given to any document. Ex.P-3 to Ex.P-6 are the R.T.C. extracts of suit schedule property, Ex.P-7 is the tax paid receipt. On the other hand, defendant has failed to file written statement within stipulated period, hence written statement was taken as not filed.

9. On perusal of the plaint averments and documents produced by the plaintiff it is observed that it is the case of plaintiff that the plaintiff is the absolute owner of the land in Sy.No.53/5 of Shravanoor, Doddaballapura Taluk. The plaintiff is in possession of the suit schedule property having katha transferred in his name and paying tax. As per plaintiff the suit schedule property was originally ancestral joint family property of plaintiff. In this regard the plaintiff has produced registered sale deed dated:14-04-1969 executed by Narasamma and Jayamma infavour of Pappaiah Late Gangaiah who is the father of plaintiff in respect of land in Sy.No.53/5 totally measuring 23 guntas. The plaintiff has

produced extract of panchayath parikath dated:15-01-1990 reciting about 'C' schedule property allotted to the share of Papanna S/o Gangaiah wherein land in Sy.No.53/5 measuring 11 ½ guntas was allotted infavour of Pappanna S/o Gangaiah who is the father of plaintiff. It appears by over sight said document is not marked by this court. Subsequently the katha has been transferred in respect of suit schedule property in the name of plaintiff's father Pappanna as per Ex.P-3 and Ex.P-4. It is further case of the plaintiff that after death of plaintiff's father plaintiff has inherited same under IHC/M.R.No.1/94-95 and he is in possession of the suit schedule property. However defendant No.1 in the year 2003 offered the plaintiff to exchange the properties with other survey numbers. But it was not done so. When plaintiff obtained the revenue records of suit schedule property in the year 2013 he got to know that his name is missing in the R.T.C. extracts. The name of husband of defendant No.1 has been substituted. In this regard plaintiff has produced Ex.P-4 and Ex.P-5 R.T.C. extracts. As per plaintiff he has approached the revenue authority but it was advised get declaration of title by the civil court. The defendants taking advantage of katha in their names threatening the plaintiff to dispossess from the suit schedule property.

10. It is pertinent to note that, on the other hand, even though defendants appeared before the court but failed to contest the case of the plaintiff by filing written statement within stipulated time. Hence the case of plaintiff, evidence

and the documents produced by the plaintiff remained unchallenged by the defendants. Therefore, an adverse inference has to be drawn against the defendants. There are no reasons to disbelieve the version of P.W-1 and the exhibits marked by P.W-1 at Ex.P-1 to Ex.P-7. Under these circumstances, it is clear that the plaintiff has to proved his case by producing the cogent evidence and documents. The plaintiff has also proved that he is in peaceful possession and enjoyment of suit schedule property and that the defendant has interfered with the peaceful possession of the plaintiff over the suit schedule property. As such, the plaintiff is entitled for the relief of Declaration and permanent injunction as sought in the plaint. Accordingly, **Point No.1 to 4** are answered in the '**Affirmative**'.

11. Point No.5:- For the reasons stated in above points I proceed to pass the following ;

ORDER

The Suit filed by the plaintiff against defendants is hereby decreed with cost.

It is declared plaintiff is the absolute owner of the suit schedule property.

Defendants are hereby restrained by way of permanent injunction from interfering with the peaceful possession and enjoyment of plaintiff over the suit schedule property.

Office to draw decree accordingly.

(Dictated to the stenographer, computerized, corrected, and pronounced in open court on this the 15th Day of November 2021)

(MAMATHA SHIVAPUJI)
Addl. Civil Judge & JMFC
Doddaballapura.

ANNEXURE

List of witnesses examined for plaintiff:

P.W-1 - Sri. Rajanna

List of witnesses examined for defendant:

- Nil -

List of documents exhibited for plaintiff:

Ex.P-1 - Registered sale deed

Ex.P-2 - By oversight serial number was not given to
any document

Ex.P-3 to Ex.P-6-The R.T.C. extracts

Ex.P-7 - The tax paid receipt.

List of documents exhibited for the defendants:

- Nil -

(MAMATHA SHIVAPUJI)
Addl. Civil Judge & J.M.F.C.,
Doddaballapura.