

**IN THE COURT OF THE PRL., CIVIL JUDGE & J M FC
HOSAKOTE.**

PRESENT

**Smt. Gomati Manmath Shet,
LL.M., DIPR, DCL
Prl., Civil Judge & JMFC
Hosakote.**

Dated this the 16th day of September, 2014.

O.S.NO.194/09..

Plaintiff/s : **Sri. Narayanappa
S/o. late Chikkanna
Aged about 55 years,
R/o. Venkatapura village,
Kasaba Hobli,
Hoskote taluk,
Bangalore Rural District.**

(By Sri. K. Narayanaswamy, Advocate)

-VS-

Defendants: **1. Sri. Anjinappa
S/o. Muniswamappa
Aged about 67 years,
R/o. Venkatapura village,
Kasaba Hobli,
Hoskote taluk,
Bangalore Rural District.**

(By Sri. K.G.Ramakrishnaiah, advocate)

Date of institution of suit - 27.8.2009

Nature of suit - For permanent injunction

**Date of commencement of
Recording of evidence - 13.6.2013**

**Date of pronouncement of
Judgment - 16.09.2014**

Total duration - year/s Month/s Day/s
5 - 19

(Gomati M Shet)
Prl.,Civil judge & JMFC.,
Hosakote.

J U D G E M E N T

This is a suit filed by the plaintiff against the defendant for the relief of permanent injunction.

2. Plaintiff's case in brief is as follows:-

The vacant site property bearing khanesumari No.140/142, SL No.21, measuring east-west;41+23 feet (in total 64 feet), and North-South;70 feet, situated at Venkatapura village,Hoskote taluk, is a suit schedule property and the plaintiff has been the absolute owner in possession and enjoyment of the same sicne 50 years.

Defendant having no manner of right, title and interest over the suit schedule property made hectic attempt to cause illegal interference with the peaceful possession and enjoyment of the plaintiff over the same. Hence this suit seeking relief of permanent injunction.

3. Inter alia, defendant resisted the suit by filing written statement, wherein he has contended that he is the absolute owner in possession and enjoyment of the property bearing khanesumari No.142 Janjar No.29 measuring east to west 105 feet and North to south 120 feet situated at Venkatapura village, Hoskote taluk, He has further contended that plaintiff colluding with Grampanchayath officials has got the documents created in his favour in respect of suit schedule property. Defendant has denied almost all the averments taken up in the plaint and sought for dismissal of the suit.

4. On the basis of rival pleadings and materials available on record, following issues have been framed by this court.

ISSUES

1. Whether the plaintiff proves that he is in lawful possession and

enjoyment of the suit property as on the date of suit?

2. Whether the plaintiff further proves the alleged interference?

3. Whether the plaintiff is entitle for the reliefs as sought for ?

4. What order or decree?

5. Plaintiff in support of his contention taken up in the plaint examined himself as PW.1 and got marked the documents at Ex.P.1 to Ex.P.9. On the other hand, defendant himself is examined as DW.1 and got marked the documents at Ex.D.1 to Ex.D.48.

6. Heard. Perused the materials available on record.

7. My findings to the aforesaid issues are as under:-

Issue No.1 to 3:- **In the Negative**

Issue No.4:- As per the final order

For the following:-

REASONS

8. **Issue No.1 to 3:-** Since these issues are

interlinked with each other, they are taken up together for common discussion, in order to avoid the repetition of facts.

9. In support of the averments taken up in the plaint, the plaintiff entered into the witness box and led oral evidence as PW.1 and got marked as many as 9 documents as per Ex.P.1 to Ex.P.9. On the other hand, defendant himself is examined as DW.1 and got marked the documents at Ex.D.1 to Ex.D.48, and closed his side. The affidavit evidence of both the parties is nothing but replica of their pleadings.

10. The suit schedule property in the instant case is the vacant site property bearing khanesumari No.140/142 measuring east west-41=23 feet(in total 64 feet) North-South 70 feet situated at Venkatapura village. In order to prove that plaintiff is in lawful possession and enjoyment of suit schedule property relied upon demand register Uttar and tax assessment lists, tax paid receipts, photos and negatives as per Ex.P.1 to 9. But on perusal of the boundaries, measurement and extent shown in plaint schedule differs with that of Ex.P.2 the tax assessment list for the year 2009-10 . At the northern side of the plaint schedule

property, it is mentioned as **late Gangamma, now her daughter Muniyamma's site property (katha no.198)**, whereas in Ex.P.2 relied upon by the plaintiff, at the northern side it is mentioned as **road**. PW.1 has also admitted this fact during the course of his cross-examination. It is specifically stated by the plaintiff that his father and after his death plaintiff has been in peaceful possession and enjoyment of the suit schedule property since 50 years. But absolutely, plaintiff has failed to produce any single piece of documents to show his lawful possession and enjoyment over the same prior to the year 2008-2009. More over, plaintiff has not pleaded either in his plaint nor produced any documents to show the acquisition of title either by his father or by himself. The tax paid receipt produced by the plaintiff as per Ex.P.5 and 6 are of the year 2009 and 2012. The photographs produced by the plaintiff will no way help him in proving/arriving his possession and enjoyment in suit schedule property. In order to grant the relief of permanent injunction, which is in discretionary in nature, the governing principles relating to the same are well settled. Plaintiff, who approaches the Court with such relief is bound to prove the issues casted in his

favour. On his own strength plaintiff is required to prove his possession and enjoyment of the suit schedule property and that of the interference by the defendant as alleged in the plaint. According to the plaintiff, defendant himself during the course of his cross-examination has admitted that plaintiff is in possession and enjoyment of the property since 50 years. No doubt, defendant/DW.1 has admitted such contention in his cross-examination, but the same will not exempt plaintiff from proving issues casted upon him. On the other hand, plaintiff is required to prove the issues with cogent materials. As stated supra, plaintiff except demand registers extract, tas assessment lists, tax paid receipts and photographes has failed to rely upon convincing materials in support of his claim. Even in Ex.P.2 as stated supra and as per the very admissions given by PW.1 himself there is discrepancy with regard to the extent, measurment and boundaries of the suit schedule property. Under the circumstances, it becomes very difficult to accept the contentions of the plaintiff. Hence, I am of the considered opinion that plaintiff has failed to prove his lawful possession and enjoyment of the suit schedule property. When things stood thus, the question of

interference by the defendant over the suit schedule property does not survive for consideration. Hence, I answer issues No.1 to 3 in the **negative**.

11.IssueNo.4:- In the light of foregoing discussions, I proceed to pass the following:-

ORDER

Suit of the plaintiff is dismissed.

In the circumstances, no order as to cost.

Draw decree accordingly.

(Dictated to the stenographer directly on computer, after computerized by her corrected signed and then pronounced by me in the open court this the 16th day of September, 2014).

(GOMATI M. SHET)
Prl., Civil Judge & J.M.F.C.,
Hoskote.

ANNEXURE

Witnessed examined: for plaintiff

PW.1 Narayanappa

For defendants:-

DW.1 Anjinappa

Documents admitted: for plaintiff

Ex.P.1 to Ex.P.4 - Two demand register Uttar
and two tax assessment lists.
Ex.P.5 and 6 Two Tax paid receipts
Ex.P.7 to 9 Two photography and negatives

For defendants:-

Ex.D.1 to 6 Tax assessment list & demand
register extracts.
Ex.D.7 to 34 Tax paid receipts
Ex.D.35 & 36 Endorsements given
by panchayath
Ex.D.37 Certificate issued by
Lakkondahalli, Gram
Panchayath,
Ex.D.38 & 39 Judgment & decree in OS.71/02
Ex.D.40 Tax assessment extract.
Ex.D.41 endorsement
Ex.D.42 & 43 Applications
Ex.D.44 Tax assessment register
Ex.D.45 Tax paid receipt
Ex.D.46 to 48 Tax assessment lists.

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