

C.R.P.67]

GOVERNMENT OF KARNATAKA

Form No.9 (Civil)
Title Sheet for
Judgement in Suits
(R.P.91)

TITLE SHEET FOR JUDGEMENTS IN SUITS

IN THE COURT OF ADDL. CIVIL JUDGE & J.M.F.C
CHINTAMANI.

OS NO. 196/2011

Dated 25th day of November 2014.

Present:

**Sri. Natesha.R, B.Com, LL.B.,
Addl. Civil Judge & JMFC.,
Chintamani.**

Plaintiff/s:

Sri. Ramachandra reddy,
S/o Late Narayanappa,
Aged about 53 years,
R/at Hiranyahalli village,
Kasaba hobli,
Chintamani Taluk,

[Rep. by Sri. M.T.H., Advocate]

V/S

Defendant/s:

Sri. Ananda Reddy,
S/o late Venkatareddy, A/a 45 years,
R/at Hiranya halli Village,
Kasaba Hobli, Chintamani Taluk.

[Rep. by Sri. T.S.P., Advocate]

Nature of suit	:	Permanent injunction
Date of Institution of suit	:	16.07.2011
Date of Commence of evidence:	:	30.09.2013
Date of Judgment	:	25.11.2014
Total Duration	:	Years Months Days 03 04 09

(Sri.Natesha.R)
Addl. Civil Judge & JMFC.,
Chintamani.

JUDGMENT

This is a suit of the plaintiff filed against the defendant for the relief of permanent injunction to restrain him from interfering with the suit schedule property, for costs and such other reliefs.

2. Brief facts of the plaintiff's case are that,

He is the absolute owner in a possession without any obstruction of the suit schedule property. The Zilla panchayath of Kolar had issued a letter dated 19.04.1988 bearing no. ji.pa.ko.pi.fs-53/88-89 to all the panchayath Secretaries so also to the Oolavadi Mandal Panchayath who have visited the suit schedule property conducted a mahazar and taken statements from the local residents, having considered the same, registered his name in the Katha book with respect to the suit schedule property in Khata no.122A on 22.03.1989 and his name continued till the year 2000. Where in the year the said Secretary went on deputation to the Muddenahali Grama Panchayath, Chikkaballapur taluk, taking undue advantage of the fact, the defendant by colluding with the Bill collector of the Kagathi Gram Panchayath, got created the new Katha no. as 141 for the suit schedule property in the same schedule, when it was came to his knowledge, he got clarification and come to know that his Katha no.122A has been altered and created a new Katha no. as 141 in the name of the defendant, thereafter he approached the CEO of

Chintamani Taluk Panchayath who got clarification from the Kagathi grama panchayath that there was no Katha no. 141 and had not registered in their Katha Register Book and also observed that the schedule to both Katha numbers are one and the same as such there is no opportunity to register Katha on the name of the defendant. The defendant had also filed a suit against him in OS No.87/2001 and the Secretary was also the defendant no.4 who had filed the written statement against the defendant in the case on hand. Therefore, the said suit was withdrawn by the defendant.

3. The plaintiff is having his suit schedule property as his ancestral property and it also legalized from the year 1989 by way of issuing the Khatha No. as 122A from the Oolavadi Gram Panchayath, Chintamani Taluk, in spite of it the defendant is trying to interfering with the property hence the suit is for the relief of permanent injunction.

4. That the cause of action arose for the suit in the month of July 2011, when the defendant tried to interfere and subsequently within the jurisdiction of the court where the suit subject matter is situated and that the suit is valued as per annexed valuation slip for the purpose of court fee and jurisdiction and prays to decree the suit.

5. The suit summons duly served on the defendant, who appeared before the Court, and categorically denied the entire case of the plaintiff and contended that already

the plaintiff had filed a suit bearing no. 68/2011 which was dismissed on merits and the suit subject matter was also one and the same in the case on hand and which was also filed for the same relief of permanent injunction. By agreeing the order, he also preferred an appeal before Hon'ble Civil Judge Senior division, Chintamani in RA No.70/2005 which was also dismissed for non prosecution. That apart again the plaintiff has also filed another suit in OS No.149/2009 against one B. Venkatareddy for the same relief of permanent injunction. As such he is a chronic litigant and having habit of filing number of suits without any merits and from the past ten years he is dragging the defendant to the court, he has suppressed the material particular and not come up with clean hands and he is absolutely stranger to the suit schedule property, there is no cause of action, as already the suit was dismissed for the same relief he can not file another suit as it attracts the principle of res-judicata, hence the suit be dismissed with exemplary costs.

6. On the basis of records and materials placed on record my learned predecessor-in-office has framed the following issues:

- 1) Whether the plaintiff proves that, he is in actual possession and enjoyment of suit schedule property as on the date of institution of suit ?

- 2) Whether the plaintiff further proves the alleged interference by the defendant as stated in the plaint ?
- 3) Whether the plaintiff is entitled for the relief as sought for?
- 4) What order or decree?

7. In order to prove the plaintiffs' case, he himself got examined as PW1 and got marked Ex.P1 to Ex.P18 documents. On the other hand the defendant himself got examined as DW1 and got marked Ex.D1 to Ex.D6 documents.

8. Having heard the arguments on both side.

9. My findings on above Issues are as follows:

Issue No.1 : In the Negative,

Issue No.2 : In the Negative,

Issue No.3 : In the Negative,

Issue No.4 : As per the final order for the following;

REASONS

Issue No.1:

10. It is the case of the plaintiff that, he is an absolute owner and in a possession of the suit schedule property. The Zilla panchayath of kolar had issued a letter dated 19.04.1998 bearing no. ji.pa.ko.pi.fs-53/88-8 to all the panchayath secretaries and so also to the Oolavadi Mandal Panchayath and on the basis of the said letter who have visited the suit schedule property and

conducted mahazar and also taken statement from the local residents and having considered the same registered a name of the plaintiff in the khata book and gave khata no.122A on 22.03.1989 and his name continued till the year 2000. Where in the year 2000, the said Secretary went on deputation to the Muddanahalli grama panchayath, Chikkaballapur Taluk, as such taking undue advantage of the fact, the defendant by colluding with the Bill collector of Kagathi grama panchayath, got created the new khata number as 141 for the suit schedule property for the same schedule, when it was came to his knowledge he got clarification and come to know that his khata number 122A has been altered and created as a new khata No. 141 in the name of the defendant. There after he approached the CEO of Chintamani Taluk panchayath, who got clarification from the Kagathi grama panchayath that there was no khata no. 141 and had not registered in their Khata Register Book, also observed that the schedule of both Khata numbers are one and the same, as such there is no opportunity to register Khata in the name of the defendant. On the other hand the defendant had also filed suit against him in OS No.87/2001 and the concerned Secretary was also made as defendant no. 4 who had filed the written statement against the interest of the defendant in the case. Therefore the said suit was withdrawn by him.

11. The suit schedule property has being his ancestral property and it is also registered in his name from the year 1989 by way of issuing the Khata no. as 122A from the Oolavadi grama panchyathy, inspite of it the defendant is trying to interfering with his property, hence the suit.

12. On the other hand the defendant resisted the suit of the plaintiff and his specific contentions are that, the plaintiff is not in a possession of the suit schedule property. The plaintiff had also filed a suit against him and his mother in OS No. 68/2001 for the same relief of permanent injunction which was dismissed on merits, against which also preferred an appeal which was also dismissed for non prosecution and the plaintiff himself is disturbing his possession, he has not come up with clean hands, suppressed material particulars and he is a chronic litigant having habit of filing several suits and the suit on hand for the same relief will attract the principle of res-judicata, hence prays to dismiss the suit.

13. Now, it is burden on the plaintiff to prove that he is in a possession of the suit schedule property as on the date of the suit. He can not use the weakness of the defendant as a trump card to succeed in his case, as it is his exclusive burden as contemplated Under section 101 of The Evidence Act, to prove the factum of possession. He himself got examined as PW1 and his affidavit in lieu of examination-in-chief is nothing but replica of the plaint averments. In support of his case got marked

Ex.P1 to Ex.P18. Ex.P1 is endorsement issued by the Oolavadi Mandal Panchayath dated 22.03.1989, Ex.P2 is endorsement issued by Kagati Grama Panchayath dated 06.06.2000, Ex.P3 is a letter to CEO from Kagati Grama Panchayath dated 19.04.2001, Ex.P4 is a Tax assessment list for the year 1993-94 of Oolavadi Mandal Panchayath, Ex.P5 is a Tax assessment list for the year 1994-95 of Oolavadi Mandal Panchayath, Ex.P6 is a Demand Register Extract of Oolavadi Mandal Panchayath of the year 1993, Ex.P7 is a Tax assessment list for the year 2000-2001 of Kagati Grama Panchayath, Ex.P8 is certified copy of Demand Register, Ex.P9 is Demand Register for the year 2011-12 of Kagati Grama Panchayath, Ex.P10 is a Tax assessment list for the year 2011-12 of Kagati Grama Panchayath, Ex.P11 is a House list for the year 2012-13, Ex.P12 is a tax assessment list for the year 2011-2012, Ex.P13 is Certified copy of Order sheet in OS no.87/2001, Ex.P14 is certified copy of Amended Plaint in OS no.87/2001, Ex.P15 is certified copy of Written statement filed by defendant no.1 in OS no.87/2001, Ex.P16 is certified copy of Written statement filed by the defendant No. 4 in OS no.87/2001, Ex.P17 is certified copy of Order sheet in OS No.87/2001, Ex.P18 is certified copy of Written statement filed by defendant No. 4 in OS no. 87/2001. On the basis of these documents the plaintiff is claiming that he is in a possession of the suit schedule property.

14. In his cross examination he admits that he had filed a suit against the defendant and his mother and it was dismissed. He also admits that he preferred an appeal against the said Judgment and Decree and which was dismissed for non prosecution. He also admits that both have been litigating for the same property since 13 years and denies that even though he is not in a possession of the suit schedule property, filed a suit against the defendant. He admits that he had filed an another suit in OS No. 68/2001. He states that the said suit was filed in respect of Katha No. 86 measuring 40 x 80. But he denies the suggestion that the old katha number of 86 is 122A. According to the defendant the plaintiff has filed the said suit in OS No. 68/2001 for the same katha No. 122A. On the other hand the plaintiff states that the katha No. 86 is different from katha No. 122A. He also denies that now he has filed a suit by showing the old number 122A, though both numbers 86 and 122A are one at the same and he categorically denies the property which is claiming the suit that he is in a possession is also the subject matter of earlier suits filed by him. However there is no dispute in respect of the fact that he has filed earlier suit against the defendant and his mother in OS No. 68/2001.

15. The defendant has produced the certified copy of Judgment in OS No. 68/2001 filed by the plaintiff in the case on hand against him and which was dismissed on merits that he is not in a possession of the suit

schedule property. It is settled position of law that admitted facts need not be proved as contemplated under Section 58 of Evidence Act. Therefore it is relevant to refer the certified copy of the judgment in OS No. 68/2001. There is a clear finding at para 16, which reads thus *“The plaintiff has suppressed the fact of existence of ditch in an area 60 X 15 feet referred above. He has clearly admitted that there is no building over the suit schedule property. The person who seeks the relief of permanent injunction is expected to reach the Court with clean hands. The relief of Permanent injunction being a discretionary remedy can not be given to a person who reaches the Court with un clean hands. The person who expects equity is expected to do equity. The relief of permanent injunction must be weighed in the judicial balance correctly and accurately and must be given to a person who reaches the Court with clean hands. Here in this case the plaintiff has utterly failed to establish the existence of the house building as narrated in the plain. He has not produced any documents to show that there are various types of trees existing over the suit schedule property such being the state of affairs I am of the opinion he has utterly failed to prove his possession over the suit schedule property.”*

16. In view of the finding now it is necessary to look in to the description of the property which was subject matter in the said suit, which was given in the schedule that house property bearing house list No. 122A (old

number) and new number has 86/81, totally measuring 40 X 60 feet in which constructed portion measuring 40 X 30 feet and consisting 5 Neem trees and an Arali tree, two Huvarsi trees situated at Hiranyapalli village, Kagathi Grama Panchayathi, Kasaba Hobli, Chintamani Taluk, bounded on East by Government and Government road, land of Anjaneya Reddy and Muninarayanappa, West by property of the Government and Ashwatha Reddy, North by the Government kere colony, South by road. On perusal of the schedule in the case on hand, it is also the same subject matter of OS No. 68/2001. Therefore the evidence on record discloses that again the plaintiff filed a suit against the defendant for the same relief with respect to the same subject matter.

17. It is also admitted fact that the plaintiff has preferred an appeal against the order in OS 68/2001, but it was dismissed for non prosecution. Therefore even he could have prosecute the defendant in the said appeal instead of that again filed a suit for the same relief. He has not disclosed anything about earlier suit filed by him. He suppressed material particular. On the other hand he states that the defendant had also filed a suit against him in OS 87/2001, but for the best reasons known to him he withdrawn the same. However it is the liberty of the plaintiff in OS No. 87/2001 to proceed or to withdraw the suit. But it is not helpful in anyway to the plaintiff in the case on hand, as it is his exclusive burden

to prove that he is in a possession of the suit schedule property.

18. Even in spite of verdict in OS No. 68/2001 he filed the present suit, however he relief upon Ex. P1 to P18. Amongst Ex.P1 to P12 are Tax assessment list and Tax Demand Register, definitely not helpful to the plaintiff to prove his possession. On the other hand those documents are meant for collection of tax in respect of an immovable property, but those documents will not speak on the exclusive possession of the plaintiff over the suit schedule property. The other documentary evidence produced by him are relating to OS No. 87/2001, wherein the Ex.P18 is the certified copy of the written statement of the defendant No. 4 who being the concerned Secretary of Grama Panchayath in his written statement, he had categorically denied that the plaintiff in OS NO. 87/2001 was in a possession and according to him *“he had worked as a Secretary of Kagathi Grama panchayath from the year 1997 to 2000. He did not effected any resolution in respect of Kahatha No. 141 of Hiranyapalli village and he did not mentioned any measurements and its boundaries, in fact a resolution was written by the Bill Collector effecting the katha of 141 in favour of Ananda Reddy i.e., the plaintiff in OS No. 87/2001.*

In the year 2000 he went on deputation to Muddenahalli Grama Panchayath of Chickballapura Taluk as a Secretary. On 23.08.2000 the Executive Officer of

Taluk Panchayath has issued a letter by asking explanation regarding the katha No. 141, Hiranyapalli Village and he who replied to the said letter on 16.01.2001 by asking call for the original demand register for the verification of entries made in the said register and he expressed a doubt in issuing copy of the demand register regarding khatha No. 141 as such it might have forged. His signature was also forged. The said Executive Officer had not call for the records and verified the same.

When he was working as a Secretary of Khagathi Grama Panchayath he never passed a subject 23 of Agenda dated 13.03.1998 regarding effect of khatha in the name of Ananda Reddy S/o Venkata Reddy of Hiranyapalli and he never resolved making khataha of east west 100 feet and north south 100 feet by mentioning the boundaries. By having influence and on the base of the same the said Ananda Reddy might have tampered the resolution book and inserted the above said subject in the resolution. Therefore according to him the said Ananda Reddy got concocted the Grama Panchayath records, therefore necessary to summon those documents to know the real controversy involved in the case.”

19. If at all, this was the case of the defendant No. 4 in OS No. 87/2001, then the plaintiff in the case of the hand could have approached the proper forum challenging the katha entries of 141 in the name of the defendant. But no such thing was happened. There is no such documentary evidence produced by the plaintiff,

whether he approached the proper forum and also known the whisper about the same thing in his plaint averments, under such circumstances only on the basis of the written statement filed by the defendant No. 4, they could not relied upon Ex. P7 and 18 to show that illegally katha has been made in the name of the defendant in respect of the same schedule, which he is claiming in possession. This part of the pleading of the plaintiff will create a doubt that he is in a possession of the suit schedule property.

20. It is settled position of law that both parties have been litigating for the same suit subject matter that they are in possession, then the Court has to trace out who has better title than the other. In this respect the Ex.P1 to Ex.P12 which are copies of Tax Assessment list and Tax Demand Register could not be called as they are documents title to the suit schedule property. Under such circumstances the plaintiff has to come up with clenching a documentary evidence to show that he has better title over the suit schedule property. On critically examining the oral and documentary evidence of the plaintiff, without any hesitation it can be hold that he not at all produced any single scrap of paper to show that he is in a possession of the suit schedule property, on the other hand he himself stating that the defendant also claiming possession over the suit schedule property, is itself creating a doubt on the case of the plaintiff. Therefore in a doubtful case the Court can not exercise

its judicial discursion to grant the relief of permanent injunction in favour of the plaintiff as such the plaintiff has utterly failed to prove his possession over the suit schedule property, hence I answer the Issue No. 1 in the Negative.

Issue No. 2:

21. Since the plaintiff failed to prove that he is in a possession of the suit schedule property, then the consideration of alleged interference by the defendant over the suit schedule property does not arise at all, hence without any hesitation, I hold that the plaintiff has utterly failed to prove that the alleged interference by the defendant, hence I answer Issue No. 2 in the Negative.

Issue No. 3 & 4:

22. It is admitted fact that the plaintiff has already field a suit against the defendant and his mother, which was dismissed on merits and it was not discloses anything about the earlier suit, as such suppressed material particulars and dragged the defendant to the Court by filing the case on hand without on any merits, as such he is liable to pay costs to the defendant, having regard to the facts and circumstance of the case the defendant is entitled to recover cost of Rs. 5,000/-, accordingly the plaintiff is not entitled to any relief. Hence I answer **Issue No. 3 in the Negative** and I proceed to pass the following;

ORDER

The suit of the plaintiff is hereby dismissed with cost of Rs. 5,000/-.

The defendant is at liberty to recover cost from the plaintiff.

Draw decree accordingly.

[Dictated to the Typist directly on computer, corrected and pronounced by me in the open court on 25th day of November 2014].

(Sri.Natesha.R)
Addl. Civil Judge & JMFC.,
Chintamani.

ANNEXURE**1. List of witnesses examined on behalf of plaintiff.**

PW1 Sri. Ramachandra Reddy 30.09.2013

2. List of witnesses examined on behalf of defendant.

DW1 Sri. Ananda Reddy 10.09.2014

3. List of documents marked on behalf of plaintiff.

Ex.P1 - Endorsement dated 22.03.1989

Ex.P2 - Endorsement dated 06.06.2000

Ex.P3 - A letter to CEO dated 19.04.2001

Ex.P4, 5, 7, 10 to 12 - Tax assessment list

Ex.P6, 8 & 9- Demand Register Extract

Ex.P13 - Certified copy of the Order sheet in
OS no.87/2001

Ex.P14 - Certified copy of Amended Plaint in
OS no.87/2001

Ex.P15 & 16 - Certified copy of Written statements
filed in OS no.87/2001

Ex.P17 - Certified copy of Order sheet in
OS No.87/2001,

Ex.P18 - Certified copy of Written statement filed in
OS no. 87/2001.

4. List of documents marked on behalf of defendants.

- Ex.D1 - Certified copy of Judgment in
OS No. 68/2001
- Ex.D2 - Certified copy of Decree in OS No. 68/2001
- Ex.D3 - Certified copy of Order sheet
in RA No. 70/2005
- Ex.D4 & 5 – Certified copy of IAs in OS No. 149/2009
- Ex.D6 - Certified copy of Orders on IAs in
OS No. 149/2009

(Sri.Natesha.R)
Addl. Civil Judge & JMFC.,
Chintamani.