

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 PRL. CIVIL JUDGE & J.M.F.C
CHINTAMANI

Dated 17th day of August 2016

Present:

**Smt Shakunthala. S, B.A, LL.B.,
Prl. Civil Judge & JMFC., Chintamani.**

OS NO.313/2011

Plaintiff/s :

Sri.Venkatarayappa,
S/o.Kadirappa
aged about 55 years,
R/at.Junjanahalli village,
Muragamalla hobli,
Chintamani taluk.

[Rep. by Sri.S.K.M. Advocate]

VS.

Defendant/s:

1. Munivenkatappa,
S/o.Late Peddavenkatappa,
aged about 55 years,
2. Ramakka,
W/o.Munivenkatappa
aged about 48 years,

3. Gangadara,
S/o.Munivenkatappa,
aged about 28 years,
4. Narasimhappa,
S/o.Munivenkatappa,
aged about 22 years,
all are R/at.Junjanahalli
village, Murugamalla hobli,
Chintamani taluk.

[Rep. by Sri.N.V.R. Advocate]

Nature of suit	:	Permanent injunction
Date of Institution of suit	:	24.11.2011
Date of Commence of evidence:		13.09.2013
Date of Judgment	:	17.08.2016
Total Duration	:	Years Months Days
		04 08 23

(SHAKUNTHALA.S)
PRL. CIVIL JUDGE & JMFC.,
CHINTAMANI.

JUDGMENT

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

2. According to plaint averments; he is the absolute owner in possession and enjoyment of the suit schedule

property. He was in continuous possession, by recognizing his continuous possession; the panchayath authorities opened the katha in his name in respect of property measuring 30x40feet. The panchayath authority of Iragampalli have issued license in respect of construction of a building, accordingly he built a house measuring 30x21feet and left vacant space measuring 30x19feet and he is in possession and enjoyment of the said property by paying all necessary charges. Defendants have no manner of right, title, interest or possession over the suit schedule property but trying to interfere with his possession claiming to construct a house from the southern side over the suit schedule property and trying to dispossess him by throwing cattle shed materials on the vacant site. He is a rustic villager, innocent, resisted the illegal acts of the defendants. In this regard also made complaint to Batlahalli police station and they have issued a NCR in 139/2011. The defendants are powerful persons in the locality having support of both financial and political and antisocial elements. The illegal acts of defendants are unable to resist without the aid of this court, hence filed this suit for the aforesaid reliefs.

3. In response to the summons the defendants have appeared before the court through their counsel and filed their written statement by denying the entire case of plaintiff and contended that the plaintiff has given wrong boundaries

and wrong measurements to the suit schedule property and claiming the property belonged to them. The plaintiff by covering their property towards southern side and towards southern side boundary mentioned as Kharabu kallu Bande but in fact the said Kharabu kallu Bande comes only after their property and Narasimhappas property. With a malafide intention in order to knock of their property included their property towards southern side by giving wrong boundary. He has not produced any document to show his possession and the documents produced clearly establish that he is not in possession of the suit property and the boundaries given are different. Their property bearing SL.No.41 property no.63 measuring 24x20feet and left 3feet for sandu which bounded by east by Chinna Venkatappa, West by Sandhu and Moogappas house, north by 3 feet sandhu after plaintiffs house, south by Narasimhappas house, thereafter Kharabu kallu Bande which was their ancestral property and it was a hut. Gramapanchayath passed a resolution that village shall be non hut village, accordingly they have demolished the hut and put up a foundation within the boundary stated above. The mahazar has been conducted by panchayath authority in presence of villages holding that they are in lawful possession and can construct the house. Accordingly this property no way concerned to the plaintiff. Plaintiff has given dimension of suit property as 30x40feet and according to him he built a house in measuring 30x21feet and left the space 30x19feet,

as such he is totally in confuse over the measurement and boundaries and the suit is a created story, hence prayed for dismissal of the suit with exemplary costs.

4. On the above materials this court 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 defendants as stated in the plaint?
3. Whether the plaintiff is entitled for the relief as sought for?
4. What decree or order?

5. In order to prove the above issues plaintiff got examined himself as PW1 and in support of oral evidence also got marked 7 documents at ExP1 to ExP7.

6. On the other hand the defendant no.1 examined himself as DW1 and two more witnesses have been examined as DW2 and DW3 to disprove the case of plaintiff and in support of oral evidence also got marked 10 documents at ExD1 to ExD10.

7. Heard the arguments on both side.

8. On perusal of materials available on record my answer to the above issues are:

Issue No1: In the negative

Issue No2: In the negative

Issue No3: In the negative

Issue No4: as per the final order for the following:

REASONS

9. **Issue No.1 to 3**: As these issues are interlinked together and in order to avoid repetition of facts and evidence I would like to discuss all the issues together. The burden is on the plaintiff to prove his possession over the suit schedule property as on the date of suit. In this context the plaintiff got examined as PW1 and he has reiterated in his affidavit filed in lieu of his examination in chief that he is in lawful possession and enjoyment of the suit schedule property having acquired by virtue of continuous possession accordingly panchayath authority recognizing his continuous possession opened katha in his name. He also got obtained license from the panchayath and constructed a house in a measurement of 30x19feet and left the space out of 30x40feet. The defendants have no manner of right, title, interest over the suit schedule property but are trying to claiming and construct a house from the

southern side of the suit schedule property and trying to dispossess him which is illegal. In order to establish the same got produced the demand register extracts at Exp1 and Exp2.

10. On perusal of Exp1 pertains to the year 2011-2012 in the name of plaintiff, but neither the boundary nor the base for entries made there in has been mentioned in Exp1 and Exp2 which is of the year 1995-96 in the name of plaintiff, but the base for entries also not been mentioned in Exp2. Exp3 is the license obtained for construction of a house in an extent 30x40feet with boundaries. Exp4 and Exp5 are tax paid receipts, Exp6 is NCR, Exp7 is sketch. Except produced Exp1 to Exp7, no other documents have been produced by the plaintiff to prove acquisition of possession over the suit schedule property, that to according to him, he acquired the possession over the suit schedule property by virtue of continuous possession and panchayath authority opened katha in his name. If at all katha opened in his name by panchayath under what authority the katha has been opened in his name by the panchayath, whether it has been granted or not or whether the panchayath has got authority to open katha in the name of plaintiff without any process which has to be clarified by plaintiff and moreover what is the base for entries in Exp1 and Exp2 also not been established by plaintiff.

11. On the contra it is the contention of defendant that the suit schedule property included the property belonged to them wherein the plaintiff filed this suit for including their property by showing the wrong boundary in order to gain the suit schedule property which belonged to them. In this regard the defendant no.1 examined himself as PW1 and in support of his defence he reiterated in his affidavit filed lieu of his examination in chief and also got examined two more witnesses as DW2 and DW3 and in support of oral evidence got marked ExD1 is demand register extract, ExD2 is tax paid receipt, ExD3 is certified copy of spot mahazar, ExD4 is receipt, ExD5 to ExD7 are Three digital photos, ExD8 is CD, ExD9 is grant certificate, ExD10 is demand register extract.

12. The burden is on the plaintiff to establish his possession over the suit schedule property as on the date of suit. In this regard in order to establish the possession got produced the demand register extracts at ExP1 and ExP2. On perusal of ExP1 pertains to the year 2011-2012 and except mentioned the name of Venkatarayappa but nothing has been mentioned in respect of measurement nor boundaries so also in ExP2 relating to the year 1995-96 mentioned the name of Venkatarayappa to an extent of 25x40feet without boundaries and the plaintiff not establishes the basis for entries of ExP1 and ExP2. In ExP2 the measurement has been mentioned as 30x40feet but how the plaintiff acquired the said

measurement not at all been established nor pleaded in the plaint, except alleged that he is in possession continuously and by considering his possession the panchayath opened the katha in his name. If at all the katha has been made out by the panchayath in respect of said extent definitely there should be some documents from the panchayath issued in favour of plaintiff in order to establish acquisition of possession over the suit schedule property, but nothing has been mentioned in respect of acquisition of suit schedule property in Exp1 and Exp2 and the said documents are baseless documents. Exp3 is the license issued by panchayath in respect of extent mentioned in Exp1 and Exp2 and Exp4 and Exp5 are tax paid receipts and Exp6 is the endorsement issued by police and Exp7 is sketch with measurement and boundary. On perusal of plaint schedule the boundary mentioned to the suit schedule property to an extent of 30x19feet, but on perusal of Exp7 the boundary mentioned in respect of property measuring 30x40feet and the boundaries mentioned in Exp7 is the similar boundary mentioned in suit schedule. If at all the property katha stands in the name of plaintiff to an extent of 30x40feet, but the boundary mentioned in Exp7 and in the suit schedule, the measurement shown as 30x19feet, which are contrary, such being the case definitely the remaining property out of 30x 40feet should be in existence either side of the suit schedule property, but it is not the case of plaintiff that he left some

property and constructed a house. Further it is not specifically pleaded that he has constructed a house in a measurement of 30 x 19feet but in para 3 of the plaint he clearly stated that he built a house measuring east west 30feet and north south 21feet and left vacant space measuring east west 30feet and north south 19feet, but which is contrary to the schedule shown in the plaint as well as ExP7.

13. Admittedly the plaintiff approached this court for the relief of equity in order to obtain the relief of equity, he must establish the existence of property within boundary mentioned in the suit schedule, more particularly the acquisition of suit schedule property that to the existence of suit schedule property and the measurement therein within the boundary mentioned. When there is no base for acquisition of possession over the suit schedule property by the plaintiff and according to him he was in continuous possession if so he would have pleaded specifically since from how long he was in possession and if he was in possession definitely would have produced some documents, but except produced ExP2 for the year 1995-96 and except mentioned the name of plaintiff, nothing has been mentioned in the said document and only on the basis of ExP1 to ExP7 it cannot be hold that the plaintiff acquired the possession of suit schedule property and he is in possession over the suit schedule

property as on the date of suit. Further more even though he has stated in respect of his case in his chief examination but while cross examination he clearly admitted the suggestion made to him in respect of boundary to the extent that “ ದಾವಾ ಸ್ವತ್ತಿನ ದಕ್ಷಿಣಕ್ಕೆ ಮುನಿವೆಂಕಟಪ್ಪ ರಾಮಕ್ಕ ಪಾಯ ಹಾಕಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ. ದಾವಾ ಸ್ವತ್ತು 30 ಗುಣಿಸು 40 ಅಡಿ ವಿಸ್ತೀರ್ಣದಲ್ಲಿ ಮನೆಯನ್ನು 26 ಗುಣಿಸು 21 ಅಡಿಗಳಲ್ಲಿ ಕಟ್ಟಿದ್ದೇನೆ. 26 ಗುಣಿಸು 21 ಅಡಿಗಳಲ್ಲಿ ಮನೆ ಕಟ್ಟಿದ್ದೇನೆ ಎಂದು ಈ ದಾವೆಯಲ್ಲಿ ಕಾಣಿಸಿದ್ದೇನೆ. ಸಾಕ್ಷ್ಯ ಪ್ರಮಾಣ ಪತ್ರದಲ್ಲಿ ಕಾಣಿಸಿದ್ದೇನೆ. ನನ್ನ ಸ್ವತ್ತಿನ ದಕ್ಷಿಣಕ್ಕೆ ಹಾಲಿ ನರಸಿಂಹಪ್ಪ ಪಾಯ ಹಾಕಿದ್ದಾರೆ. ದಾವಾ ಷೆಡ್ಯೂಲ್ ಚೆಕ್ಕುಬಂದಿಯಲ್ಲೇ ನನ್ನ ಸ್ವತ್ತು ಬರುತ್ತದೆ ಎಂದು ತೋರಿಸಲು ದಾಖಲೆ ಹಾಜರು ಮಾಡಿದ್ದೇನೆ. ” Even though cross examined the DW1 to DW3, but nothing has been elicited in support of his case. On the other hand suggestion made to DW1 that “ವಾದಿಗೆ ಮಂಜೂರಾಗಿರುವ 30 ಗುಣಿಸು 40 ಅಡಿ ವಿಸ್ತೀರ್ಣದಲ್ಲಿ ಆತ 30 ಗುಣಿಸು 19 ಅಡಿಯಲ್ಲಿ ಮನೆ ಕಟ್ಟಿಕೊಂಡು ಉಳಿಕೆ ಖಾಲಿ ಜಾಗ ಬಿಟ್ಟುಕೊಂಡಿದ್ದಾರೆ ಎಂದರೆ ಆ ಬಗ್ಗೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ.”. This suggestion itself goes against to the case of plaintiff and even though DW1 stated during cross examination that towards southern side existence of Kharabu kallu Bande and thereafter the property of Subbakka but when the burden is heavily on the plaintiff to prove acquisition as well as existence of property within the boundary and more over the defendants property not at all been shown as which situated by any side of the suit schedule

property as per the schedule. Such being the case the question of alleged interference as contended by plaintiff holds no water in the eye of law and in the absence of convincing and cogent and clear evidence it cannot be hold that the plaintiff established his case by producing satisfactory evidence before the court in order to obtain the order of equity, accordingly I answer all the issues in the negative.

14. **Issue No.4**: For the above reasons, I proceed to pass the following :

ORDER

The suit filed by the plaintiff is
hereby dismissed with cost.

Draw decree accordingly.

[Dictated to the Stenographer who computerized it then revised and corrected by me and pronounced in the open court on 17th day of August 2016].

**(SHAKUNTHALA.S)
PRL.CIVIL JUDGE & JMFC.,
CHINTAMANI.**

ANNEXURE

1. List of witnesses examined on behalf of plaintiff.

PW1: Sri.Venkatappa

2. List of witnesses examined on behalf of defendants.

DW1: Sri.Munivenkatappa
DW2: Sri.Chinnanarayanawaswamy
DW3: Sri.Venkatasubbareddy

3. List of documents marked on behalf of plaintiff.

Exp1 & 2 : Two demand register extracts
Exp3 : House building license
Exp4 & 5 : Two tax paid receipts
Exp6 : NCR
Exp7 : Sketch given by Iragampalli G.P.

3. List of documents marked on behalf of defendants.

ExD1 : Demand register extract,
ExD2 : Tax paid receipt,
ExD3 : Certified copy of spot mahazar,
ExD4 : Receipt
ExD5 to 7 : Three digital photos,
ExD8 : CD,
ExD9 : Grant certificate,
ExD10 : Demand register extract.

(SHAKUNTHALA.S)
PRL. CIVIL JUDGE & JMFC.
CHINTAMANI.