

**IN THE COURT OF THE ADDL. CIVIL JUDGE &  
JUDICIAL MAGISTRATE FIRST CLASS AT  
HOSADURGA.**

**PRESENT: SRI. GANGADHAR BADIGER**  
B.A.,LL.B.(Spl).  
Addl. Civil Judge & JMFC., Hosadurga.

**THIS 22<sup>nd</sup> DAY OF OCTOBER 2020**

**ORIGINAL SUIT NO. 146/2018**

**PLAINTIFF** :- Sri. B.R. Rajaram,  
S/o Late Rudroji Rao,  
Aged about 73 years,  
Agriculturist,  
R/at Belagur Village,  
Srirampura Hobli,  
Hosadurga Taluk.

**(By Sri M.S., Advocate)**

-V/S-

**DEFENDANT/S** :- 1. Sri. Malleshappa,  
S/o Late Ramappa,  
Aged about 55 years,  
2. Sri. Jayalakshamma,  
D/o Late Ramappa,  
Aged about 45 years,  
3. Sri. Rajappa,  
S/o Late Ramappa,  
Aged about 40 years,  
4. Sri. Chandrappa,

- S/o Late Ramappa,  
Aged about 38 years,
5. Sri. Mylarappa,  
S/o Late Ramappa,  
Aged about 36 years,
6. Sri. Rathnamma,  
D/o Late Ramappa,  
Aged about 34 years,
7. Sri. Shekharappa,  
S/o Late Ramappa,  
Aged about 32 years,  
All are Agriculturists  
R/o Kodihally Village,  
Srirampura Hobli,  
Hosadurga Taluk.

**(Df No.1 to 7 by Sri. V.G., Advocate)**

1	Date of Institution of the suit	16/03/2018
2	Nature of the Suit	Permanent Injunction
3	Date of recording of Evidence	07/09/2018
4	Date of which judgment pronounced	22/10/2020
5	Total Duration	Year/s Month/s Day/s 02 07 08

**(Gangadhar Badiger)**  
**Addl. Civil Judge & JMFC:**  
**Hosadurga.**

## J U D G M E N T

The plaintiff has filed suit for declaration to the effect that the plaintiff is an absolute owner in possession of the suit schedule property and consequential relief of permanent injunction against the defendants.

**2. The plaintiff's case is as under :-** (a) The plaintiff is an absolute owner in possession of the suit schedule property and he has purchased the suit schedule property from the father of defendants under registered sale deed dated 23/08/1968. Since from the date of purchase the plaintiff is in peaceful possession and enjoyment of the suit schedule property. However, the katha of the suit schedule property was not changed and it is still standing in the name of erstwhile owner by name Ramappa.

(b) The defendants being the children of vendor of the plaintiff I.e., Ramappa, are trying to interfere in the peaceful possession and enjoyment of the suit schedule property on the basis of the records of rights standing in their names by denying the title of the plaintiff. The suit survey number has been changed as 69/P instead of 23/2 in revenue records. The plaintiff has grown plantation trees

and the defendants may destroy standing trees by over night. The acts of the defendants cannot be prevented without the assistance of this court. Hence, the present suit.

**3.** In pursuance of suit summons the defendants appeared through their counsel, however, the defendants did not file any written statement.

**4.** In order to prove the case of the plaintiff's, the plaintiff himself examined as PW.1 and got examined one independent witness as PW-2 and got marked Ex.P.1 and closed his side.

**5.** Heard the arguments of counsel for plaintiff. Perused the oral and documentary evidence and materials available on record.

**6.** The following points arise for the consideration of this court.

1) Is the plaintiff an absolute owner in possession and enjoyment of the suit schedule property ?

2) Are the defendants trying to interfere in the peaceful possession and enjoyment of the suit schedule property ?

3) Is the plaintiff entitle for the reliefs sought in the plaint?

4) What order or decree?

7. The finding of this court to the above points are as under:

**Issues No-1 :- In the Negative.**

**Issues No. 2 :- In the Negative.**

**Issues No. 3 :- In the Negative.**

**Issues No. 4 :- As per final order  
for the following;**

### **REASONS**

**9. Point No.1 :-** It is the case of the plaintiff that the plaintiff is an absolute owner in possession and enjoyment of the suit schedule property and he has purchased the same from the father of defendants through registered sale deed dated 23/08/1968. In order substantiate the plaint averments the plaintiff himself examined as PW-1 by filing an affidavit in lieu of examination in chief and reiterated the plaint averments. The plaintiff has produced Ex.P1, which is the original registered sale deed dated 23/08/1968. On perusal of Ex.P1 it reveals that property bearing survey number 23/2 measuring 4-00 acres situated at Kodihally

village was sold to the plaintiff by Ramappa son of Poovaiah of Kodihally Village and on the date of sale deed itself the possession was handed over to the purchaser plaintiff. Since the document is of more than 30 years old and it has come from proper custody and as such presumption U/s 90 of Indian Evidence Act is applicable. And as such the due execution of Ex.P1 shall be presumed to be correct.

**10.** However, it is to be noticed that the survey number sold in the Ex.P1 is bearing Sy.No.23/2 of Kodihally Village. Whereas, the plaintiff has sought a declaration to the property bearing Sy.No.69/P stated to be new number given to the Sy.No.23/2 of Kodihally village. But, the plaintiff in order to substantiate this fact has neither produced RTC of the suit schedule property and also preliminary revenue records for having changed the Sy.No.23/2 as Sy.No.69/P of Kodihally Village. In the absence of any documents for having changed the survey number and also in the absence of record of rights pertaining to the suit schedule property, it cannot be said that the plaintiff is the absolute owner in possession and enjoyment of the suit schedule property.

**11.** Though, PW-2 deposed that the suit property belongs to the plaintiff and he is in possession of the suit schedule property, in the absence of any documentary evidence to show that the suit survey No.69/P is the property purchased by plaintiff that is survey No.23/2. It cannot be held that the plaintiff is the owner and in possession of suit property only on the basis of oral evidence of PW-2. Though the defendants did not contest the suit by filing written statement denying the averments of plaint. However, the plaintiff has come before the court stating that he is an absolute owner in possession of suit schedule properties. The burden lies upon him to substantiate the same.

**12.** The order 8 Rule 10 of CPC is relevant and it is extracted as under;

**10. Procedure when party fails to present written statement called for by Court- Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit on the pronouncement of such judgment a decree shall be**

**drawn up.**

on perusal of the above provision it is clear that the court has got two options, when defendant fails to file written statement. The first one is that the court may pronounce judgment against defendants on failure of filing of written statement and second one is to make any order as it thinks fit. It means that the court can call upon the plaintiff for proof of the plaint averments and then it can decide the matter. Similarly in the present case on hand though the defendants did not file any written statement, however the plaintiff has not produced any documents to show that the property purchased under Ex.P1 and the suit survey No.69/P is one and the same. Despite, giving sufficient time the plaintiff has not even file RTC of suit schedule property. As such the plaintiff failed to prove that he is the owner in possession of the suit schedule property. **Hence, the point No.1 is answered in the Negative.**

**13. Point No.2 :-** When the plaintiff himself failed to prove that he is the owner in possession of the suit schedule property, the question of interference by the

defendants over the suit schedule property does not arise at all. **Hence, without any hesitation the point No.2 is answered in the Negative.**

**14. Point No.3 :-** In view of the answers to the point No.1 & 2, the plaintiff is not entitled for the reliefs of declaration of title and permanent injunction. Apart from this court has giving the opportunity to produced the primary revenue records as per Section 132 of Karnataka Land Revenue Act, by releasing the case from judgment on 5/12/2019 till 3/10/2020. Despite, opportunities the plaintiff has not produced the primary revenue records. The failure to produce the primary revenue records along with suit, even granting sufficient time, the suit of the plaintiff is liable to be rejected as per Section 132 of Karnataka Land Revenue Act. In the absence of any documentary evidence to show that the plaintiff is the owner and in possession of the suit schedule property, he is not entitled for the relief of declaration. When the relief of declaration itself is denied and the question of consequential relief does not survive for consideration. As such the plaintiff is not entitled for the reliefs claimed. **Accordingly, the point No.3 is answered in the Negative.**

**15. Issues No. 4:-** In view of the above reasons and answers to the point No.1 to 3, this court proceed to pass the following :-

**:O R D E R:**

***The suit of the plaintiff is hereby dismissed with cost.***

***Draw decree accordingly.***

*(Dictated to the Stenographer, typed by him on computer and corrected by me, then pronounced in the open Court on this 22nd day of October 2020)*

**(Gangadhar Badiger)  
Addl. Civil Judge & JMFC:  
Hosadurga.**

**:: A N N E X U R E ::**

- 1. WITNESSES EXAMINED FOR THE PLAINTIFF:- 1.**  
PW.1                    :-    Sri. Rajaram  
PW.2                    :-    Sri. Krishnamurthy
- 2. DOCUMENTS MARKED FOR THE PLAINTIFF:-**  
Ex.P.1                  :-    Sale deed  
Ex.P.2                  :-    RTC
- 3. WITNESSES EXAMINED FOR THE DEFENDANTS:-**  
                                  --NIL--
- 4. DOCUMENTS MARKED FOR THE DEFENDANTS:-**  
                                  --NIL--

**(Gangadhar Badiger)  
Addl. Civil Judge & JMFC:  
Hosadurga.**

