

KACD510014312020



Presented on : 13-10-2020  
Registered on : 13-10-2020  
Decided on : 28-07-2022  
Duration : 1 years, 9 months, 15 days

**IN THE COURT OF PRINCIPAL CIVIL JUDGE  
AT HOSADURGA**

PRESENTS

**Sri. Shivaraju H.S.**  
B.A.Law. L.L.B.,  
Prl.Civil Judge and J.M.F.C,  
Hosadurga.

**Original Suit No.243/2020**

**DATED THIS 28<sup>th</sup> DAY OF JULY-2022**

**PLAINTIFFS :**

1. Sri.Ramalingappa,  
S/o Late.Sidramaiah,  
Aged about 50 years,  
R/o Tarikere thotadamane,  
Methodu Hobli,  
Hosadurga Taluk,  
Chitradurga District.

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

**Versus**

**DEFENDANT:**

1. Sri.S.Ganganna,  
S/o Late.Sankapp,  
Aged about 55 years,  
R/o Siddagondanahally village,  
Methodu Hobli,  
Hosadruga Taluk.  
Chitradurga District.
2. Sri.Shankarappa,  
S/o Late.Sankappa,  
Aged about 45 years,  
R/o Siddagondanahally village,  
Methodu Hobli,  
Hosadruga Taluk.  
Chitradurga District.
3. Smt.Chandrappa  
D/o Late.Sankapp,  
Aged about 40 years,  
R/o Chowlayiriuru village,  
Kadur Taluk.  
Chikkamagaluru District.
4. Smt.Kariyamma  
W/o Kariyappa,  
Aged about 75 years,  
R/o Tarikere thotadamane,  
Methodu Hobli,  
Hosadurga Taluk,  
Chitradurga District.
5. Sri.Shekarappa,  
S/o Kariyappa,  
Aged about 45 years,  
R/o Tarikere thotadamane,  
Methodu Hobli,  
Hosadurga Taluk,  
Chitradurga District.

6. Smt.Shankamma  
D/o Late.Sidramaiah,  
W/o Kantappa,  
Aged about 44 years,  
R/o Tarikere thotadamane,  
Methodu Hobli,  
Hosadurga Taluk,  
Chitradurga District.
7. Smt.Magalamma  
D/o Late.Sidramaiah,  
W/o Gurumurthy  
Aged about 42 years,  
R/o Tarikere thotadamane,  
Methodu Hobli,  
Hosadurga Taluk,  
Chitradurga District.
8. Sri.Gurumurthy  
S/o Late.Sidramaiah,  
Aged about 40 years,  
R/o Tarikere thotadamane,  
Methodu Hobli,  
Hosadurga Taluk,  
Chitradurga District.

**(Df.No.1 to 3 by Sri.V.G., advocate  
Df.No.4 & 5 by Sri.G.B., advocate  
Df.No.6 to 8 Ex-perte)**

Date of Institution of the suit.	13.10.2020
Nature of the suit.	Declaration and Permanent Injunction
Date of the commencement of recording of the evidence.	25.10.2021
Date on which the Judgment was pronounced.	28/07/2022

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O.S.No.243/2020

Total Duration

Year/s	Month/s	Day/s
01	08	28

**(SHIVARAJU H.S.)**  
**Prl.Civil Judge & JMFC.,**  
**Hosadurga.**

## **J U D G M E N T**

The plaintiff has filed this suit against the defendants for the relief of declaration and permanent injunction.

2. Brief facts of the case are as under:

It is specific case of the plaintiff's that, the properties as shown in the plicant in schedule 1 and in schedule 2 are follows:

### **SCHEDULE "1"**

Item No.	Survey/Property Numbers.	Measurement	Village
1	156/1A	2 acres	Tharikere village

### **SCHEDULE "2"**

Item No.	Survey/Property Numbers.	Measurement	Village
1	156/1A	12 ½ guntas	Tharikere village

are their ancestral joint family properties of parties to the suit. The defendant No.6 to 8 are formal parties. The subject the matter of the suit herein referred as ***"suit properties"***.

3. It is further case of the plaintiff's that, the defendant No.6 to 8 made as formal parties. The suit properties were originally belonging to Dasabhovi S/o Pujari Hanumanthabhovi of Tarikere majure

bhovihatty village of Hosadurga. The said Dasabhovi S/o Pujari Hanumanthabhovi divided Sy.156 totally measuring 10 acres 10 guntas North-South and sold item No.1 infavour of Channabasappa S/o Sanna Sankappa under registered sale deed dated 12.07.1965 for total consideration amount of Rs.300/-. Further, suit schedule property No.2 was sold by the children of Dasabhovi namely Hanumanthabhovi and Ramabhovi infavour of father of plaintiff. Accordingly, name of the grandfather was mutated in the records of item No.1, as per M.R.No.20/91-92 and name of the father of the plaintiff was records of item No.2 as per M.R.No.9/92-93. After the death of said grandfather and father, the plaintiff and defendant No.6 to 8 have been in joint possession and enjoyment of the same without any disturbance from anybody. But, the defendant No.1 to 5 by colluding with gunda elements threatened the plaintiff and obstructed him in cultivation of the said properties. The defendant No.1 to 5 absolutely have no, right, title, interest over the suit properties. The plaintiff and defendant No.6 to 8 have got equal right and interest over the same. Hence, during the first week of October 2020, when defendant No.1 to 5 caused obstruction to the plaintiff in possession and enjoyment of the suit properties, cause of action

arose to file the suit. Therefore, the plaintiff has constrained to file suit against the defendants for the relief of declaration to declare that, properties are ancestral joint family property of plaintiff and defendant No.6 to 8 and consequential, relief of permanent injunction restraining the defendant No.1 to 5 their men, agents, servants, etc, from the causing any kind of interference or obstruction in whatsoever manner.

4. After service of summons the defendant No.1 to 5 have appeared before the court through their counsel, but they have not filed any written statement.

5. In spite of service of summons the defendant No.6 to 8 have not appeared before the court. Hence, they were placed Ex-Parte.

6. In order to prove the case, the plaintiff himself examined as P.W.1. On the plaintiff's side as many as five documents are marked as per Ex.P-1 to Ex.P-5. The defendants have not adduced any evidence.

7. The documents relied upon by the plaintiff is given in the annexure of this Judgment.

8. Heard the arguments of counsel for plaintiff and perused entire materials placed on record.

9. Upon hearing arguments and on materials placed on record, the following Points that would arise for consideration:

#### **POINTS**

1. Whether the plaintiff is entitled to the reliefs as sought for ?
2. What Order or Decree ?

10. My findings to the above Points are as under:

Point No.1 : In the Affirmative.

Point No.2 : As per final order for the following :

#### **REASONS**

11. **Point No.1**:- Herein, the plaintiff has filed this suit by specifically alleging that, item No.1 was purchased by his grandfather under registered sale deed dated 12.07.1965 for total consideration amount of Rs.300/- and item No.2 was purchased by

his father under sale deed dated 29.06.1992 for total consideration amount of Rs.2,000/-. The said properties were purchased from Dasabhovi S/o Hanumanthabhovi and his sons. Accordingly, the records were mutated in the name of grandfather and father of the plaintiff. The defendant No.1 to 5 being no way concern to the suit properties illegally and highhandedly caused obstruction to the plaintiff in possession and enjoyment of the same. Hence, this suit.

12. In order to prove the case, plaintiff himself examined PW-1. In the examination-in-chief PW-1 filed affidavit in consonance with plaint averments by reiterating the plaint averments, RTC extract for the year 2021-2022 in respect of land measuring 6 acres 20 guntas situated at Tarikere village marked as per Ex.P-1, Sale deed dated 12.07.1965 is marked as per Ex.P-2, Sale deed dated 29.06.1990 is marked as per Ex.P-3, Mutation register No.32/2010-11 is marked as per EX.P-4, Mutation register No.2/2011-2012 is marked as per Ex.P-5 respectively.

13. Here, as per the alienation of the plaintiff, he has produced certified copy sale deed dated 12.07.1965 marked as per Ex.P2. The

recitals of the said sale deed makes very clear that, Sy.No.154 totally measuring 10 acres 10 guntas was decided North-South and 2 acres land bounded towards East remaining land of Dasabhovi, West-Nanjappa and Ramanna's land, North-Doddaramabhovi's land, South- Land of Jynabi Bgjum, was sold by Dasabhovi S/o Pujari Hanumanthabhovi under sale deed registered dated 12.07.1965 for total consideration amount of Rs.300/- in favour of Channabasappa S/o Sanna Sankappa.

14. Further, the plaintiff also produced certified copy of sale deed dated 29.06.1992 marked as per Ex.P-3. The recitals of the said sale deed also makes evident that, Sidrammappa S/o Channabasappa was purchased 12 and half guntas of land bounded towards East-Sy.No.156/1A land of Dasappa's children ,West-Land of plaintiff, North-Land of Ningamma W/o Channabasappa, South-Land of Sankarappa, for Rs.2,000/- from Hanumanthabhovi and Ramabhovi sons of Dasabhovi. So these documents chows clear case of the plaintiff and also are strengthen to his case.

15. The Defendants have appeared before the court and cross-examined PW.1. Hence, oral and documentary evidence of plaintiff remains unchallenged and un-impeached.

16. Furthermore, the RTC extract and Mutation register extract are also in the name of grandfather and father of the plaintiff. Therefore, upon consideration of the oral and documentary evidence of the plaintiff, it is very clear that, the plaintiff has placed sufficient material evidence before the court to hold that, his grandfather purchased item No.1 under registered sale deed dated 12.07.1965 marked as per Ex.P-2 and his father purchased item No.2 under registered dated 29.06.1992 marked as per Ex.P-3.

17. That, suit summon issued to the defendants duly served, and they have appeared before the court. The defendants inspite of knowledge of pendency of the suit have not filed written statement by opposing claim of the plaintiff. Even, inspite of having knowledge of pendency of the suit they have not chosen to contest the case. Under such circumstances, adverse inference need to be drawn against the defendants.

18. The very fact that, defendants have not contested the case of the plaintiff clearly goes to show that, they have indirectly admitted it. At this stage, it is relevant to note a decision reported in **2002 CLJ 199 Section 114 of Evidence Act**, wherein it was held that, ***party to the suit not appearing in the witness box, offer to cross-examination of the party not given, presumption arises that, the case of the party not genuine.***

19. Therefore, upon considering the facts and circumstances of the case very clear that, the plaintiff has successfully established his case through oral and documentary evidence from which, it is proved by the plaintiff that, the suit properties are ancestral joint family properties of himself and defendant No.6 to 8. As such, the defendant No.1 to 5 have to be restrained from causing any kind of interference or obstruction to the plaintiff in possession and enjoyment of the suit properties. ***Hence, this court answered the point No.1 in the Affirmative.***

20. **Point No.2**:- In view of findings on point No.1, this court proceed to pass the following :

**ORDER**

Suit of the plaintiff is hereby decreed in following terms.

The relief of declaration is granted in infavour of plaintiff.

Accordingly, it is hereby declared that, suit properties are ancestral joint family properties and plaintiff and defendant No.6 to 8.

The relief of permanent injunction is also granted infavour of plaintiff.

Consequently, the defendant No.1 to 5, their men, agents, servants etc., are permanently restrained from causing any kind of interference or obstruction to the plaintiff in possession and enjoyment of the suit properties in whatsoever manner.

No order as to costs.

Draw decree accordingly.

*(Dictated to the stenographer, transcribed by her, corrected by me, then pronounced in the open court on this the 28<sup>th</sup> day of JULY 2022)*

**(SHIVARAJU H.S.)  
Prl.Civil Judge & JMFC.,  
Hosadurga.**

### **ANNEXURES**

#### **List of Witnesses examined on behalf of Plaintiffs:**

P.W.1 : Ramalingappa S/o Late.Sidramaiah.

#### **List of Documents marked on behalf of Plaintiffs:**

- Ex.P-1 : R.T.C extract in respect of land bearing Sy.No.156/1A.  
Ex.P-2 : Sale deed dated 12.07.1965.  
Ex.P-3 : Sale deed dated 29.06.1992.  
Ex.P-4 : Mutation register No.32/2010-11.  
Ex.P-5 : Mutation register No.2/2011-12.

#### **List of Witnesses examined on behalf of Defendants :**

--Nil--

#### **List of Documents marked on behalf of Defendants:**

--Nil--

**(SHIVARAJU H.S.)  
Prl.Civil Judge & JMFC.,  
Hosadurga.**