



**IN THE COURT OF THE PRL. CIVIL JUDGE &
JMFC, KADUR.**

Present: Sri. Ram Prashanth M.N, B.A.L., LL.B.
Prl. Civil Judge & JMFC, Kadur.

Dated: This the 1st day of February 2024

O.S. NO.59/2018

1. P.G.Yogesha S/o Govindappa,
Aged about 47 years, Agriculturist,
2. P.C.Sumithra W/o P.G.Yogeesha,
Aged about 45 years, Agriculturist,
Both are R/at. Pattanagere village at post,
Kasaba Hobli, Kadur taluk,
Chickkamgaluru District.

PLAINTIFFS

[By Sri K.N.R., Adv.]

V/s

1. P.D.O., Pattanagere, Pattanagere Grama
Panchayath, Kadur Taluk, Chikmagalur Dist.
2. Executive Officer, Taluk, Panchayath, Kadur.
3. Chief Executive Zilla Panchayath,
Chikmagalur.
4. Thimmashetty S/o Late Thimmappa,
Agriculturist, Aged about 65 years,
5. P.C.Anjanappa S/o Late Chinnagiriyaappa,
Aged about 65 years,
6. P.H.Nagaraja S/o Late Hanumathappa,
(moolemane), Aged about 52 years,
7. P.T.Ravi S/o Late Thimmaiah,
Agead about 48 years,
8. P.G.Thimmaiah S/o Giryajja,
Aged about 68 years,
9. P.M.Ravi, S/o late Mariyappa,
Aged about 47 years,
10. Rajanna S/o Puttappa, Aged about 55 years,
11. P.T.Raju S/o Lali Thimmanna,



- Aged about 45 years,
 12. Chandraiah P.K. S/o Late Javali Krishnappa,
 Aged about 60 years
 13. P.G.Narayanappa S/o Kokke Govindappa,
 Aged about 50 years,
 14. Puttappa S/o Late Rangajjana,
 Aged about 60 years,
 15. Ramesh P.A. S/o Anjanappa,
 Aged about 40 years,
 16. Venkatesh S/ Hanumanthappa,
 Aged about 20 years,
 Defendants No.4 and 5 are the
 panchayath members and
 4 to 16 all are Agriculturist,
 R/o Pattanagere village, Kadur taluk,
 17. Krishnanaika, Grama Panchayathi members,
 N.G.Koppalu, Pattanagere post, Kadur taluk.

(Def No.1 to 3 by Sri.CMG., Def.4 to 7 by Sri.C.B. Adv) DEFENDANTS

Date of Institution of Suit:	18.01.2018		
Nature of the suit:	For Declaration and injunction		
Date of the commencement of recording of the Evidence.	26.10.2021		
Date on which the Judgment is pronounced:	01.02.2024		
Total Duration	Years	Months	Days
	06	00	13

JUDGMENT

Suit for declaration and Injunction.

2. In order to appreciate the issues, involved in this suit, it is necessary to set out in brief, the



relevant facts of the plaint, is that, the plaintiffs are the absolute owners in possession of the suit schedule, where, there was no road to Maradihalli village, hence the plaintiffs have left 16 x 600 feet for the road, even there being any acquisition proceedings or compensation given. However, the defendants have tried to interfere in order to install bore-well in the 'A' schedule, hence initially the suit was filed for injunction.

3. Further stated that during the pendency of suit the defendants without acquiring the land and even after having the knowledge of plaintiffs installing bore-well in the suit land, the defendants have installed the bore-well by demolishing the stone pillars in the corner of suit property, which is now styled as B schedule and as there was alleged denial of title, hence, plaintiffs got the suit amended and sought declaration and mandatory injunction.

4. In response to the summons, defendant No.1 filed written statement, where the defendant No.2 & 3 adopted the same by denying the plaint averments and stated that the bore-well is installed on the margin of the road and not in the suit schedule. Also stated that after formation of road of 16 X 600, the suit property is only to an extent of 1



Acre 18 guntas. Also along with other grounds prayed to dismiss the suit. The other defendants have not filed the written statement.

5. In order to prove their case, the plaintiff No.1 Yogeasha got examined as PW1 and got marked Ex.P1 to P22. The Court commissioner by name Srinivasa examined as CW.1 and got marked 07 documents as Ex.C.1 to Ex.C.7. Even after sufficient opportunity the defendants have not cross examined the Pw1 nor has adduced evidence. Since possession is not sought, hence the additional Issue No.2 got deleted as per the orders dated 31.01.2024.

6. On the basis of the material available on record, the following issues were framed:

ISSUES

1. Whether the plaintiffs prove that they are in possession over the suit schedule property as on date of filing of suit?
2. Whether the plaintiffs prove that the defendants are interfering to their peaceful possession in respect of the suit property ?
3. Whether the plaintiffs are entitled for the relief sought for?



Additional Issue

1. Whether the plaintiffs prove that he is the absolute owner of the B schedule property, which is part and parcel of A schedule property ?

4. What order or decree?

7. Heard the arguments. Perused the oral and as well as documentary evidence placed on record. My answers to the above issues are as hereunder:

Issue No.1 to 3 : Affirmative

Addnl.Issues 1 & 2 : Affirmative

Issue No.4 : As per final order

for the following:

REASONS

8. Additional Issue No.1, ISSUE NO.1 to 3 :-

As these issues are interlinked and interconnected to each other, these issues are discussed together in order to avoid repetition of facts and evidence.

The plaintiff has approached the court for the relief of declaration of title and mandatory injunction stating that they are the absolute owners in possession, where, the defendants have got bore-well installed in the property of the plaintiffs by demolishing the stone pillars and removing the



barbed wires at the B schedule, which is part and parcel of A schedule. Also as the defendants were denying the title, hence, the plaintiff has approached the court for declaration and mandatory injunction.

9. The plaintiff No.1 is examined as PW.1 and got marked 22 documents. The learned counsel for the plaintiff vehemently stated that the plaintiffs are the absolute owners in possession, where, they have given land in their property for formation of road to an extent of 16X600, that too, without acquisition proceedings and compensation. Even after giving such piece of land, the defendants have interfered and demolished the stone pillars and have installed bore-well in the suit schedule. Also stated that the defendants till today have not challenged the evidence and there is no defence claimed by the defendants in the written statement. Hence, prayed to decree the suit.

10. The defendants have contested the suit by filing written statement but have not cross examined the Pw1 nor have adduced evidence. The only contention of the defendants is that they have installed bore-well within the road margin and the said bore-well has been installed 500 feet far from



the earlier bore-well of the plaintiffs, hence, prayed to dismiss the suit. However, the defendants have not adduced evidence nor have come forward to cross examine the Pw1 neither have made efforts in substantiating their written statement contention.

11. In order to prove title, the onus of discharging the burden is on the plaintiffs. Mere stating in the plaint, that the plaintiffs are the absolute owner will not amount to proved. This Court is also fully aware, that, it is the plaintiffs, who have approached the court for declaration and it is for the plaintiffs to prove their title. Even the plaintiffs cannot stand on the weakness of the defendants. The plaintiffs alone have to prove the title with sufficient and cogent documents. Hence, keeping the arguments in mind, along with records on hand, let me discuss the issue. The main issue is regarding title and it is the burden of the plaintiffs to prove their title.

12. At the very out set, this court is of the clear opinion that, since the suit is one for a declaration of title, the burden is squarely on the plaintiffs to prove it. In **Union of India v. Vasavi Co-op. Housing Society Ltd.**, cited in AIR 2014 SC 937,



in which the Hon'ble Supreme Court has held in paras-15, 17, 18, 19 & 21 as under:

"15. It is trite law that, in a suit for declaration of title, burden always lies on the Plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the Defendants would not be a ground to grant relief to the Plaintiff.

17. At the outset, let us examine the legal position with regard to whom the burden of proof lies in a suit for declaration of title and possession. This Court in Maran Mar Basselios Catholicos vs. Thukalan Paulo Avira reported in AIR 1959 SC31 observed that:

"in a suit for declaration if the Plaintiffs are to succeed, they must do so on the strength of their own title."

18. In Nagar Palika, Jind vs. Jagat Singh, (1995) 3 SCC 426, this Court held as under:

The onus to prove title to the property in question was on the Plaintiff. In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the Plaintiff. The court is bound to enquire or investigate that question first before going in to any other question that may arise in a suit.

19. The legal position, therefore, is clear that the Plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the Defendants have proved their case or not. We are of the view that even if the title set up by the Defendants is found against, in the absence of establishment of Plaintiff's own title, Plaintiff must be non-suited."

*21. This Court in several judgments has held that the revenue records do not confer title. In Corpn. of the City of Bangalore v. M. Papaiah this Court held that: (SCC p.615, para 5) "5. **it is firmly established that revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law.**"*

*In Guru Amarjit Singh v. Rattan Chand this Court has held that: (SCC p.352, para 2) "2.**that the entries in Jamabandi are not proof of title**". In State of H.P. v. Keshav Ram this Court held that: (SCC p.259, para 5) "5.**an entry in the revenue papers by no stretch of imagination can form the basis for declaration of title in favour of the plaintiffs.**"*

13. As discussed above, it is the plaintiffs who have approached the court and onus lies on plaintiff to prove the burden, is as set out in Sec.101



of the Evidence Act. Sec.101 with its illustrations runs thus: "**Section 101 of Indian Evidence Act:** *Burden of proof. Whoever, desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.*

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

14. It is true that the plaintiffs cannot take the weakness of the defendants in order to get the relief from the Court. In a decision reported in **2004 (1) KCCR 662 [K.Gopala Reddy (deceased) by L.Rs Vs. Suryanarayan and others]**, in which the Hon'ble High Court of Karnataka held that, *"Whenever party approaches the Court for the relief based on the pleadings and issues, he has to prove his case. A suit has to be decided based on merits and demerits of the party who approach the Court. Weakness of the defendants cannot be considered as a trump card for the plaintiff."* The said ratio is aptly applicable to the case in hand. The plaintiffs have to establish the case on their own.



15. That, section 101 of Indian Evidence Act has clearly laid down that, *"Burden of proving of fact always lies upon person who asserts the fact. Until such burden is discharged, the other party is not required to be called upon to prove his case. The Court has to examine as to whether the presumption upon whom the burden lies has been able to discharge his burden. Until he arises at such conclusion he cannot proceed on the basis of weakness of other party"*.

16. In a decision reported in **(2011) 12 Supreme Court Cases 220 (Rangammal Vs. Kuppaswamy)**, it is clearly held that *"section 101 of Evidence Act has clearly laid down that the burden of proving a fact always lies upon the person who asserts the fact. Until such burden is discharged, the other party is not required to be called upon to prove his case. The Court has to examine as to whether the person upon whom the burden lies has been able to discharge his burden. Until he arises at such conclusion, he cannot proceed on the basis of weakness of the other party."*

17. By keeping the evidence, arguments and records on hand, this court proceeds to



meticulously examine, whether the plaintiffs are the absolute owners and in possession of the suit schedule. As per the principles laid down by the honorable Supreme Court and as per the law, the plaintiffs have to prove their title. The initial burden on the plaintiffs to prove that they have perfected title over the suit schedule. The weakness of the defendants or the defendants different contentions, will not make the court to believe that the case of the plaintiffs is true. It is not necessary for the defendants to establish better title, than the plaintiffs, but initially the plaintiffs have to establish title and also the defendants need to establish that the plaintiffs are not having better title.

18. In order to prove the claim of the plaintiffs, the 1st plaintiff got examined as PW1. He in his examination-in-chief has reiterated the averments made out in the plaint. Here, it is also necessary to see as to what is the stand of the defendants over the title, whether there is any serious cloud on the title of the plaintiffs. Admittedly the defendants have not disputed the title of the plaintiffs over the A schedule property. Moreover, there is no dispute of title over the A



schedule. The only contention of the defendants is that the B schedule does not belongs the plaintiffs and the bore-well is installed on the road margin. Hence, the court needs to see, whether, the bore-well installed area, that is, whether B schedule comes within the A schedule. The plaintiffs are claiming title over the B schedule, which is said to be the part and parcel of A schedule.

19. Admittedly the defendants have accepted the title of the plaintiffs in their written statement, where they have contended that the A schedule property now comes only to an extent of 1 Acre 18 guntas and not 1 Acre 27 guntas because there is road formed in the said A schedule. The defendants have also admitted in the written statement that the road is formed in suit schedule. Sketch produced by court commissioner gives a clear picture of the suit schedule, where on the edge of the suit schedule, that is in Sy.No.7/3, place is left for formation of road, even the place is left in Sy.No.7/1 7/2. As per the plaintiffs, for the formation of the road, there was no acquisition nor compensation is given but the plaintiffs have given on free of cost.

20. The defendants No.1 to 3 being the responsible office, have not furnished any document



to show that there was road earlier as per the village map. As per the commissioner report there is no naksha road existed and the plaintiffs have given on their own for the free movement. However, the defendants have not furnished any document to that effect. The defendants have not produced document to show that that land has been acquired for formation of road and compensation is given. So, it is clear that the defendants have formed road in the suit schedule and have also installed the bore-well. As per the defendants the bore-well is installed in the road margin, hence commissioner was appointed and report is received, where it is not disputed at all.

21. As per the commissioner report, the bore-well is installed in the A schedule, which is on the edge of it, however, the said bore-well comes within the A schedule. Infact, there is no government land or acquired land in between Sy.No.7/1, 7/2 & 7/3, hence, it is crystal clear that the bore-well is installed within the A schedule and the same is B schedule. Also the defendants claim that the bore-well installed by the plaintiffs is 500 feet far from the bore-well installed by them, but the commissioner has clearly mentioned that the bore-



well installed by them comes within the 232 feet. Moreover, prior to install of bore-well, there is no acquisition nor compensation is given to the plaintiffs. Also the defendants have not chosen to cross examine the Pw1 nor has adduced evidence neither have proved their defence by rebutting the plaintiffs evidence.

22. The pleadings and the documents on record clearly establish that the plaintiffs are absolute owners of the A schedule property. Also the evidence is clear to the effect that the B schedule is the part and parcel of A schedule, which belongs to the absolute ownership of the plaintiffs. There is no dispute regarding the evidence of the plaintiff as the defendants have kept quiet. The court in such exparte situation need to be very cautious as stated in **Balraj Thaneja Vs. Sunil Madhan in 1999(8) SCC 396 and 2020 SC online SC 464 between Kavitha Kanwar Vs. Pamela Mehatha** and hence by meticulous perusal of evidence of the PW.1, the court finds that the same is just and proper.

23. No person will come to the court unless their right's have been infringed. A person approaches to court for relief, when their civil right has been infringed and the act of infringement is the



cause for the plaintiffs to take an action in filing the suit. Moreover, the act of the plaintiffs approaching the court itself shows that the defendants have interfered and if really they have not interfered, then certainly they would disputed the evidence of the plaintiffs. The **Hon'ble High Court of Karnataka in Lakshamma Vs M.P.Krishnappa and others, cited in 1999(1) Kant LJ 536** has stated a person approaches the court in fear of interference, is also sufficient to grant injunction.

24. There might be the reason for the defendants that the bore-well is installed for the purpose of drinking water facilities to the general public and their act in installing bore-well is for the benefit of larger interest but that doesn't mean that they can violate the Law of the land and cause injustice to the owners of the private property. Even if it is for the benefit for the larger general public and as water is utmost necessary for every being on the land but that is not the criteria to violate the procedures and install bore-well upon their whims and fancies.

25. The act of the defendants have caused untold hardship to the plaintiffs and his



land, also by the act, the plaintiffs are forced to knock the doors of the court because the defendants have not followed the due process of Law, hence they are liable to pay cost. The defendants to please some cannot cause injustice to another, where, the bore-well installed by the plaintiffs may has the chance of drying and his farm will be at loss, hence, according to the circumstance the defendants need to stop pumping water forthwith. Also they can proceed in accordance with law to acquire the said portion of land by due process by giving suitable compensation, hence with these observations, I answer Issue No.1 to 3 and additional issue No.1 in the affirmative.

26. ISSUE NO.4:- My findings to the above additional issue No.1 and issue No.1 to 3 as affirmative, I proceed to pass the following;

ORDER

The suit of the plaintiffs is decreed with cost.

It is declared that the plaintiffs are the absolute owners of B schedule property, which is part and parcel of A schedule.

Further, it is ordered that, defendants and their men, agents are hereby directed to remove the bore-well, motor-pump, pipes and electric accessories from the 'B' schedule within one month from the date of this order.



Further the defendants are directed and shall stop the running/pumping water from the bore-well installed in the B schedule.

Defendant No.1 shall bear the cost of the plaintiffs.

Draw decree accordingly.

(Dictated to the stenographer directly on computer, typed by her and corrected by me and then pronounced in open Court, this the 1st day of February 2024)

Sd/-

(Ram Prashanth M.N.)
Prl. Civil Judge & JMFC,
Kadur.

ANNEXURE

List of witnesses examined for plaintiff:-

PW1 : Yogeesh

List of witnesses examined for defendants:-

- NIL-

List of documents marked for the Plaintiff:-

Ex.P1 : RTC
Ex.P2 : M.R.Extract
Ex.P3 : C/c. of Atlas
Ex.P4 : C/c. of Akar bund
Ex.P5 : C/c. of Sketch
Ex.P6 : C/c. of License
Ex.P7 : Acknowledgement issued by
police
Ex.P8 to 10 : Photos and C.D.
Ex.P11 to 14 : Requisitions
Ex.P15 to 21 : Photos and C.D.
Ex.P22 : Registered sale deed

List of documents marked for defendants :- NIL



List of witnesses Court commissioner:-

CW1 : Srinivasa

List of documents marked for commissioner :-

Ex.C1 : Letter

Ex.C2 : Notice

Ex.C3 : Report

Ex.C4 : Mahazar

Ex.C5 : Memo of facts

Ex.C6 : Sketch

Ex.C6 : Application to Police

Sd/-

**(Ram Prashanth M.N.)
Prl. Civil Judge & JMFC,
Kadur.**