

IN THE COURT OF ADDITIONAL CIVIL JUDGE & JMFC
MUDIGER,
ITIRINATE COURT KALASA

Present: Sri.Harisha.K.M.,B.A.LL.B.,
Addl Civil Judge and JMFC,
Mudigere.

O.S.No.120/2013 & O.S.No.186/2014

Dated 23rd April 2021

Parties in O.S.No.120/2013

Plaintiff : A.K.Shivamurthy,
S/o.Late Kollappaiah,
Aged about 60 years,
R/a Abbigadde House,
Hemmakki post, Idakini village,
Kalasa Hobli,
Mudigere taluk.

(By Sri.K.S.Adithya, Advocate)

V/s

Defendants: 1. M.B.Narendra,
S/o.Bobegowda,
Aged about 55 years,
R/a Neddinahalli, Gabgal post,
Mudigere Taluk.
(Dead)

2. Mansoor,
S/O.Kareem,
Aged about 40 years,
Dodda Angadi,
Gabgal post,
Mudigere Taluk.

3. M.S.Krishnegowda,
S/O.Subbegowda,
Aged about 45 years,
Mundane Mane,
Hemmakki post,
Idakini village,
Mudgere post.
4. Nouseer S/o Abdul Khadar
aged about years
R/o No:15/291,Talapadi, Muda Village,
Beltangadi Taluk, D.K.Dist.

(D.1.Dead)

(D.2 By Sri. Sudhir D.,Advocate)

(D.3 By Sri M.V.Jayaraj, Advocate)

(D.4 By Sri H.B.Shamanna, Advocate)

Date of institution of the suit : 23.08.2013

Nature of the suit : Possession and Permanent
injunction

Date of Commencement of
recording evidence : 07.02.2020

Date on which the
Judgment is pronounced : 23.04.2021

Total Duration	: Years	Months	Days
	07	08	00

Parties in O.S.No.186/2014

Plaintiff : A.K.Shivamurthy,
S/o.Late Kollappaiah,
Aged about 60 years,

R/a Abbigadde House,
Hemmakki post, Idakini village,
Kalasa Hobli,
Mudigere taluk.

(By Sri. K.S.Adithya, Advocate)

V/s

- Defendants:
1. Nouseer,
S/O.Abdul Khadar,
Aged 27 years,
Agriculturist,
 2. Faizal,
S/O.Abdul Khareem,
Aged 29 years,
Agriculturist,

No.1 & 2 are
R/a 15-21 Thalapadi,
Mooda village,
Jodu Via post,
Bantawala taluk, D.K.

3. M.B.Narendra,
S/O.Bobegowda,
Agriculturist,
Aged about 46 years,
Neddinamane,
Gabgal post,
Mudigere Taluk.
(Dead)

(By Sri.H.B.S., Advocate.)

Date of institution of the suit : 01.12.2014

Nature of the suit : Permanent Injunction.

Date of Commencement of
recording evidence : 07.02.2020

Date on which the
Judgment is pronounced : 23.04.2020

Total Duration	: Years	Months	Days
	06	04	22

COMMON JUDGMENT

The plaintiff in OS.No.120/2013 and O.S.No.186/2014 are one and the same and the subject matter of the suit are one and the same and relief claimed in both the suits are one and the same. Hence, on the application filed by the plaintiff, vide order dated 12.07.2019 in OS.No.120/2013 has been clubbed with OS.No.186/2014 for recording common evidence, arguments and judgment. Hence, this common judgment.

2. The plaint averments in OS.No.120/2013 is as follows:

The plaintiff has acquired the schedule item No.1 property under the Land Reforms Act vide LRF (7) 2259/76-

77 and the katha of the same has been mutated in the name of the plaintiff as per the orders of the Tahsildar, vide MR.No.9/78-79. The schedule item No.2 and 3 have been acquired by the father of the plaintiff K.G.Kollappaiah vide LRF (7) 1401/74-75 under the Land Reforms Act and the katha of the said properties have been mutated in the name of the father of the plaintiff. After the death of the father of the plaintiff, the katha of the said properties have been mutated in the name of the plaintiff and the plaintiff is in possession of the schedule "A" properties cultivating the same with paddy, areca, coffee, pepper and enjoying the same peacefully without any interruption. The defendants are not having any manner of right, title or interest over the schedule properties . The defendants No.1 and 2 are the adjacent land holders of Sy.No.64,65 and 58 and the defendant No.3 is the adjacent land holder of Sy.No.58. The plaintiff has fenced the schedule properties all around. The defendants with an intention to encroach upon the land of the plaintiff, on 16.8.2013 forcibly committed trespass into the schedule

property by removing the fence and in this regard he has lodged the complaint with the Kalasa police. The threat of the defendants is still continuing. After the filing of this suit, the defendants No.1 and 4 committed trespass into the schedule property on 18.11.2014 by removing the fence, in this regard he had filed another suit in OS.No.186/2014 against the defendants No.1, 4 and one Faizal. Being enraged by the same, the 4th defendant encroached upon 0.24 guntas of land in item No.1 property which is shown as "B" schedule property. Hence, it is prayed to decree the suit.

3. After service of suit summons, the defendants appeared before the court through their respective counsels. The defendants No.1, 3 and 4 filed separate written statements contesting the claim of the plaintiff. Defendant No.1 in his written statement contended that he do not know as to the grant of the "A" schedule lands to the plaintiff and the father of the plaintiff under the Land Reforms Act and the katha has been mutated into the name of the plaintiff. He do not know that the plaintiff is in peaceful possession and

enjoyment of the schedule "A" property. It is denied that the defendants No.1 and 2 are the adjacent land holders of Sy.No.64, Sy No:65 and Sy No:58. The alleged interference of the defendants over the schedule property on 16.8.2013 is denied as false. It is contended that there is no cause of action to file the suit, that the documents produced by the plaintiff are concocted documents, that the defendants never interfered with the possession of any property of the plaintiff, by removing the fence as alleged, hence, it is prayed to dismiss the suit with costs.

4. Defendant No.3 in his written statement denied the plaint averments in toto. It is denied that the plaintiff and the father of the plaintiff were granted with "A" schedule properties under Land Reforms Act and the katha of the same mutated into the name of the plaintiff. It is contended that he is the owner in possession, cultivation and enjoyment of the property measuring 2.25 ares (including 20 guntas of kharab) of dry land in Sy.No.58/11 (old Sy.No.58/2) of Idakani village, Mudigere Taluk, having purchased the same

from one Prabhakara Rao under the registered sale deed dated 17.7.2010 and the katha has been mutated into his name and he is paying kadayam to the said property. The plaintiff having no manner or right, title or interest over his property, trying to trespass into the said property of this defendant , the same has been resisted by this defendant , hence, the plaintiff has come up with this false suit. Again on 15.9.2013 the plaintiff tried to encroach upon the land of this defendant by removing the fence on the northern side and to cause acts of waste and damage and the same has been resisted by this defendant with great difficulty. The defendant has complained the matter with the police and filed a suit in OS.No.140/2013 against the plaintiff. It is contended that the boundaries furnished by the plaintiff to the suit property is false and imaginary, there is no cause of action to file the suit, the plaintiff is not entitle to the relief sought for, hence, it is prayed to dismiss the suit with costs. In the additional written statement the defendant No.3 has denied that on 18.11.2014 the defendants No.1 and 4 alongwith one Faizal

tried to trespass into the item No.1 of the schedule property by removing the fence, in this regard a suit in OS.No.186/2014 has been fled against them, enraged by the same Nouseer trespassed into the item No.1 of schedule property and encroached upon 0.24 guntas of land and hence, he is liable to handover the possession of the same. Hence , it is prayed to dismiss the suit with costs.

5. The defendant No.4 in his written statement contended that he do not know that the plaintiff and his father were granted with "A" schedule properties under the land Reforms Act and now the katha of the schedule "A" properties has been mutated into the name of the plaintiff. He do not know the defendants No.1 and 2 are the adjacent land holders of Sy.No.64, 65 and 58. He do not know about the alleged interference of the defendants No.1 and 2 tried to interfere with the possession of the plaintiff over the schedule properties. It is contended that as on the date of filing of this suit, this defendant was not having any land in Idakani village and on 7.12.2013 this defendant has purchased the

lands in Sy.No.65/2, 65/3, 64/3 and 58/9 of Idakani village. The plaintiff only with an intent to harass this defendant has made this defendant as party to the suit. There is no cause of action to file the suit. He never interfered with the property of the plaintiff as alleged. In the additional written statement it is denied that on 18.11.2014 this defendant alongwith the defendant No.1 and one Faizal committed criminal trespass into the property of the plaintiff in item No.1 by removing the fence. It is contended that with malafide intention this defendant has been made as party to the suit in OS.No.186/2014. It is denied that this defendant has encroached upon 0.24 guntas of "B" schedule land as alleged. It is denied that in OS.124/2014 the commissioner has confirmed the alleged encroachment of land by this defendant. This defendant never interfered with the possession of the plaintiff over his property and he has not encroached upon the "B" schedule property, hence, it is prayed to dismiss the suit with costs.

6. **Plaint averments in brief in OS.No.186/2014:**

The plaintiff has acquired the schedule item No.1 property under the Land Reforms Act vide LRF (7) 2259/76-77 and the katha of the same has been mutated in the name of the plaintiff as per the orders of the Tahasildar, vide MR.No.9/78-79. The schedule item No.2 and 3 have been acquired by the father of the plaintiff K.G.Kollappaiah vide LRF (7) 1401/74-75 under the Land Reforms Act and the katha of the said properties have been mutated in the name of the father of the plaintiff. After the death of the father of the plaintiff, the katha of the said properties have been mutated in the name of the plaintiff and the plaintiff is in possession of the schedule properties cultivating the same with paddy, areca, coffee, pepper and enjoying the same peacefully without any interruption. The defendants are not having any manner of right, title or interest over the schedule properties. The defendant No.3 has sold the Sy.No.64,65 and 58 to the defendants No.1 and 2. At the instigation of the defendant No.3, the defendants No.1 and 2 have committed trespass

into the schedule properties of the plaintiff on 18.11.2014 by removing the fence of the plaintiff. The plaintiff has already filed suit in OS.No.120/2013 against the defendant No.3 for the illegal trespass into his property. Though the defendant No.3 was asked to get survey work done through the court, to fix the boundaries and then to sell his properties to others, the defendant No.3 only with an intention to encroach upon the land of the plaintiff and to have wrongful gain, has forcibly tried to remove the fence put by the plaintiff and encroach upon the land of the plaintiff and in this regard the plaintiff has filed complaint with the Kalasa police, the threat of the defendants is still continuing. Hence, it is prayed to decree the suit with costs.

7. After service of suit summons, the defendants have appeared before this court through their counsel and defendant No.2 filed written statement by denying the plaintiff's averments and contended that he does not know as to the grant of schedule properties into the name of the plaintiff and the father of the plaintiff under the Land Reforms Act and the

katha of the same has been mutated into the name of the plaintiff. It is denied that the 3rd defendant has sold properties to the defendants No.1 and 2 and at the instigation of the 3rd plaintiff, the defendants No.1 and 2 have forcibly committed trespass into the schedule property by removing the fence. It is admitted that the plaintiff has already filed suit in O.S.No.120/2013 against the 3rd defendant. But, it is denied that the defendant No.3 was instructed to get the property surveyed through the court and then to sell the same by putting fence. It is denied that the defendant No.3 sold the properties without getting the land surveyed only with an intention to encroach upon the schedule land of the plaintiff and to have wrongful gain. It is contended that the defendant No.1 has purchased 2.23 acres of land in Sy.No.65/2 from one Sri Durgaprasad and his family members under registered sale deed and also purchased 2.12 acres of land in Sy.No.65/3 from Sri K.Sathish and his family members and also 1 acre of land in Sy.No.58/9 and 1 acre of land in Sy.No.58/10 from one Smt.H.G.Usha and third defendant under registered sale

deeds, since then this defendant is in possession and enjoyment of the said properties. The plaintiff has filed this suit only with an intent to grab the land purchased by the defendant No.1. The defendant No.1 except and in Sy.No.58/10 he has gifted all the properties to the second defendant and also given GPA to the 2nd defendant in respect of land in Sy.No.58/10. The plaintiff has already filed suit in OS.No.120/2013 against 3rd defendant, Mansoor and M.S.Krishnegowda and the said Krishnappa gowda has filed suit in OS.No.140/2013 and the said suits are still pending. The present suit has been filed only with an intention to harass this defendant. Hence, it is prayed to dismiss the suit with costs.

8. During the pendency of the suit the defendant no:1, in OS.No:120/2013 and defendant no:3, in OS.No:186/2014 was died, this suit for Permanent injunction hence, the suit against the defendant no:1 and defendant No:3, is abated.

9. Basing on the above pleadings, the following issues have been framed:

ISSUES IN O.S.NO.120/2013

1. Whether the plaintiff proves that he is the absolute owner in possession of the suit schedule property as on the date of the suit?
2. Whether the plaintiff proves the alleged interference by the defendants ?
3. Whether the plaintiff is entitle for the reliefs as claimed in the plaint?
4. What order or decree?

ADDITIONAL ISSUE DATED 6.12.2019

" Whether the plaintiff is entitle for possession of "B" schedule property from the defendant No.4 ?"

ISSUES IN O.S.NO.186/2014

1. Whether the plaintiff proves that he is in lawful possession over the suit schedule property as on the date of filing of the suit?
2. Whether the plaintiff proves the alleged interference by the defendants ?
3. Whether the plaintiff is entitle for the reliefs

as claimed in the plaint?

4. What order or decree?

10. In order to prove his case, the plaintiff in OS.No.120/2013 is examined as PW.1 and got marked 22 documents as Ex. P.1 to P.22 and court commissioner in OS.No:124/2014 examined as PW.2. Defendant No.2 in OS.No.186/2014 was examined as DW.1 and defendant No.3 in OS.No.120/13 is examined as DW.2 and got marked 7 documents as Ex. D.1 to D.7. Then the case was posted for arguments.

11. Heard arguments and perused the records. The counsel for the defendant no:4, in OS.No:120/2013, has filed written arguments.

12. On the basis of the materials available on record, my findings to the above issues are as follows:

ISSUES IN O.S.NO.120/2013:

Issue No.1: Partly in the Affirmative.

Issue No.2: In The Affirmative .

Issue No.3: In The Affirmative .

Additional

Issue No.1: In the Affirmative.

Issue No.4: As Per Final Order,

ISSUES IN O.S.NO.186/2014:

Issue No.1: Partly in the Affirmative .

Issue No.2: In the Affirmative.

Issue No.3: In the Affirmative.

Issue No.4: As Per Final Order,for the following:

REASONS

13. ISSUE NO.1 IN OS.NO.120/2013 AND

OS.No:186/2014 : To avoid repetition in the discussion, I will consider all these issues at a time as they are inter related to each other. The plaintiff has filed in OS.No:120/2013 for the relief of possession and permanent injunction and has not sought relief of declaration, but issue no:1 was framed regarding declaration and possession of the plaintiff, when the plaintiff has not sought relief of declaration. Discussion regarding declaration does not arise. Hence, issue no:1 in OS.No:120/2013 is taken for discussion regarding only whether the plaintiff proves that he is

in possession of the suit schedule property. I have gone through the entire materials available on record. The plaintiff averred that he is the owner and in possession and enjoyment of the suit schedule properties and cultivating the same with paddy, areca, coffee, pepper and enjoying the same peacefully without any interruption. The defendants are not having any manner of right, title or interest over the schedule properties. The defendants denied the entire case of the plaintiff.

14. In order prove his case the plaintiff examined himself as PW.1, got marked Ex.P.1 to Ex.P.22. PW.1 in his chief examination of affidavit has reiterated and reaffirmed the plaintiff averments and prayed to decree the suit. One witness the court commissioner in OS.No:124/2014 examined as PW.2.

15. Ex.P.1 to Ex.P.3, Ex.P.11, Ex.P.12 and Ex.P.15 are the RTC extracts in respect of suit schedule properties, for the 2012-13 and 2013-14, wherein the name of plaintiff is appearing as possessor and cultivator. Ex.P.4 and Ex.P.14 are the MR extract which shows that the katha of the suit item no:2 and 3 has been changed in the name of plaintiff on the basis of pavathivarsu.

Ex.P.5 and Ex.P.13 are the MR extract, which shows that the katha of the suit item no:1 has been changed in the name of plaintiff on the basis Ex.P.22. Ex.P.6, Ex.P.7, Ex.P.16 and Ex.P.17 are the Index of land and Record of Rights. Ex.P.8 is the sketch pertaining to the suit schedule properties. Ex.P.9 is the Tax paid receipt issued in the name of plaintiff. Ex.P.10 is the Patta book in respect of suit schedule properties. Ex.P.18 is the N.C. Ex.P.19 is the answers given by the court commissioner to the memo of instructions filed by the plaintiff in OS.No:124/2014. Ex.P.20 is the sketch submitted by the court commissioner in OS.No:124/2014. Ex.P.21 is the notice copy issued by the court commissioner in OS.No.124/2014 to the plaintiff and the defendant. Ex.P.22 is the form No.10 in respect of suit item No.1.

16. On other hand Defendant No.2 in OS.No.186/2014 was examined as DW.1 and defendant No.3 in OS.No.120/13 is examined as DW.2 and through DW.1 got marked 7 documents as Ex.D.1 to D.7. DW.1 and DW.2 in their chief examination of affidavit have reiterated and reaffirmed the written statement averments and prayed to dismiss the suit.

17. Ex. D.1 to D.5 are the RTC extracts in respect of Sy.No.66/3, Sy No:64/3 , Sy No:58/9, and Sy No:58/10 for the years 2019-20, wherein the name of Faizal is appearing as possessor and cultivator. Ex. D.6 is the copy of the sale deed dated 12.8.2013 executed by defendant No.1 M.B.Narendra and his wife infavour of defendant No.4 Nouseer in respect of Sy.No.58/9 and Sy No:58/10 of Idakini village,Mudigere Taluk. Ex. D.7 is the certified copy of the registered gift deed 8.1.2015 executed by Nouseer in favour of Faizal in respect of Sy.No.58/9, Sy No:64/3 , Sy No:65/2 and Sy No: 65/3 of Idakini village.

18. On perusal of Ex.P.1 to Ex.P.17 and Ex.P.22, which shows that the suit item no:1, Sy No:58/2, measuring 2 acre has been granted in Vide LRF(7) 2259/1976.77 and Special Tashildhar, Mudigere, issued Ex.P.22 in the name of plaintiff. On the basis of Ex.P.22 the katha to an extent of 2 acre in Sy No:58/2 has been changed in his name as per Ex.P.5. But in the Ex.P.1 and Ex.P.11 the name of the plaintiff is appearing as possessor and cultivator to an extent of 2 acre 30 guntas.

19. On perusal of Ex.P.2, Ex.P.3 and Ex.P.12, RTC extracts for the year 2013.14, which shows that the name of the plaintiff is appearing as possessor and cultivator of the suit item no:2 and 3 and the katha of the same has been entered in his name as per Ex.P.4.

20. The defendant no:3 has contending that on 15.09.2013 the plaintiff is tried to trespass and encroach upon the Sy No:58/11 measuring 2 acre 05 guntas, belongs to him, by removing the fence on the northern side of the same. In order to prove the same the defendant no:3 has not produce any documentary and oral evidence. Hence, the contention of the defendant no:3, does not hold any water.

21. The plaintiff has produced Ex.P.19 and Ex.P.20, answers given to memo of instructions and sketch, which shows that the defendant no:3, in OS.No:120/2013 has encroached to an extent of 2 acre 09 guntas land of plaintiff in Sy No:58/2, i.e suit item no:1 and the defendant no:4 in OS No:120/2013, has encroached 24 guntas in Sy No:58/2, i.e suit item no:1. It shows there is particular portion has encroached by the defendant no.3

and defendant no:4. For the reasons discussion in other issues, the defendant no:3 and defendant no:4 in OS No:120/2013 has no right of encroached portion and they are liable to handing over possession of the same to the plaintiff.

22. DW.1 in his cross examination has admitted that he has no right in the suit schedule properties and the suit schedule properties RTC extracts are standing in the name of plaintiff. DW.2 in his cross examination has admitted that the plaintiff is the owner to an extent of 2 acre 36 guntas. Further the defendant no:3 has taken specific defence that the plaintiff is given wrong boundaries to the suit schedule properties, but on perusal of the Ex.P.8, rough sketch, the boundaries shown in the said document pertaining to suit schedule properties and boundaries shown in the suit schedule are one and the same.

23. On considering the oral and documentary evidence, the plaintiff has proved that the plaintiff is in possession of the suit item no:2 and 3. Accordingly I answer the Issue No:1, in OS.No:120/2013 and OS.No:186/2014 partly in the Affirmative.

24. ISSUE NO.2 IN OS.NO.120/2013 AND

OS.No:186/2014 : The defendants no: 1 and 2, in OS No:186/2014 and defendant no:3 and 4 in OS.No:120/2013 their written statement, denied the plaintiff's possession over the suit schedule properties. The denial of possession of the plaintiff by the defendants is sufficient to prove that, they are intending to obstruct the possession and enjoyment of the suit schedule properties by the Plaintiff.

25. It is also trite that, in order to entitle for perpetual injunction, the Plaintiff must prove the actual interference or threatened interference. It is also not necessary for his to prove the threat is really in existence. This principle of law is laid in the decision of Hon'ble High Court of Karnataka reported in 1999(1) KLJ 536 (Smt. Lakshamma Vs M.P.Krishnappa & Others), which runs thus:

“ 3. Once the Appellate Court finds the possession is with the plaintiff thus rendering a concurrent finding with the Trial Court, there should not be any hesitation on the part of the Appellate Court to grant injunction. An aggrieved person comes to the Court

complaining of interference of the defendant, may be at a particular point of time the defendant has not caused interference, but once the fear stands heavily in the mind of the aggrieved person, there shall be no difficulty for the Court to grant injunction, especially when it is found that particular person is in possession. The fact that the plaintiff is in possession of the property has not been disputed. On the other hand, the Courts below rendered concurrent finding on such possession. It is a fit case wherein injunction ought to have been granted, by the First Appellate Court.”

26. Now turning to the facts of the present case, as already noticed the very contention of the Defendant no:2 to 4 in OS No:120/2013 and defendant no:1 and 2 in OS No:186/2014 signify the interference as well as threatened interference. Hence, the Plaintiff has proved that, Defendant no: 1 and 2 in OS.No:186/2014 and defendant no:2 to 4 in OS.No:120/2013, tried to obstruct into his peaceful possession and enjoyment of the suit properties by the plaintiff. Hence, I answer Issue No.2 in OS.No:120/2013 and OS.No:186/2014 in the Affirmative.

27. ADDL ISSUE AND ISSUE No3, IN OS No:120/2013 AND ISSUE NO:3 IN OS.No:186/2014 . The plaintiff averred that after filing in OS.No:186/2014, the defendant no:3 and 4 and one Faizal, being enraged by the same, the 4th defendant encroached upon 0.24 guntas of land in item No.1 property which is shown as "B" schedule property. He came to know about that when the court commissioner has submitted report in OS.No:124/2014. Hence, he is claiming possession of the 'B' schedule property from the defendant no:4. In order to prove that the plaintiff has produced Ex.P.20 i.e, commissioner sketch submitted in OS.No:124/2014 and also examined the court commissioner as PW.2. On perusal of the Ex.P.19 and Ex.P.20, Which clearly shows that the defendant No.4 encroached the B schedule property. On perusal of the Ex.P.22, which shows to an extent of 2 acre has been granted in the name of plaintiff. But as per the sketch and pakkabook the plaintiff is in possession to an extent of 2 acres 36 guntas including 6 guntas karab. As per Ex.P.22 the plaintiff has declared as an

occupant to an extent of 2 acres, in Sy.No:58. But as per the Ex.P.1 and 11 the plaintiff is in possession to extent of 2 acres 30 guntas. Even if the plaintiff is not having title over the entire extent pertaining to suit item no:1, but as per Ex.P.1 and 11 he is in possession over the entire extent suit schedule item no:1. Which shows that before encroachment the plaintiff is in possession in the B schedule property. As per Article 64 of Limitation Act, the plaintiff is entitled for possession to an extent of 24 guntas from the defendant No.4 based on previous possession and not on title.

28. In this regard I rely upon the decision of Hon'ble Apex Court, reported in AIR 1970 SC 846 (Somanath V/s Raju) wherein it has held that " Possessory title is a good title as against everybody other than the lawful owner. Therefore, in an action of ejectment against a wrong doer, Prior possession of the plaintiff is sufficient title even if the suit was not brought within 6 months of dispossession as required by sec. 9 of the [Specific Relief Act](#), 1877.

29. By judging the principles and facts and circumstances of the case and while answering the issue No.1 in O.S.120/2013 and O.S.186/2014, the court come to the conclusion that the plaintiff is in possession and enjoyment of the suit item No.2 and 3. And also the plaintiff has proved the defendants made alleged interference to his possession. As per Ex.P.20 the defendant No.3 and 4 has encroached suit item No.1 and they are liable to handing over the same to the plaintiff. From the entire evidence produced by the both parties it can be made out that there may be threat to the possession of the plaintiff over the suit "B" schedule property and as already discussed above that the plaintiff has proved that he is in possession of the suit item no:2 and 3. Therefore, his possessory rights is required to be protected by issuing injunctory relief. Hence, the plaintiff entitled for relief of possession of the suit "B" schedule property from the defendant no:4 and permanent injunction. Accordingly, I answer the Addl Issue and Issue No:3 in

OS.No:120/2013 and Issue No: 3, OS.No:186/2014 in the Affirmative.

30. ISSUE NO:4 IN OS.NO:120/2013 AND OS.No:186/2014. In view of discussion made in detail while answering Issues No.1 to 3 and Additional Issue , I proceed to pass following.

O R D E R

OS.NO.120/2013

The suit of the plaintiff is hereby partly decreed with costs.

The defendant No.1 is dead. Suit against him, is abated, hence this suit is partly decreed.

The defendant No.4 is directed to deliver vacant possession of the “B” schedule property in favour of the plaintiff, within 3 months from the date of this order.

The defendant No.2 to 4 and their agents or the persons acting on their behalf are hereby restrained from interfering with the peaceful possession and enjoyment of suit item no:2 and 3 properties by the plaintiff, by way of Permanent Injunction.

Draw decree accordingly.

OS.NO:186/2014

The suit of the plaintiff in OS.No.186/2014, is hereby partly decreed with costs.

The defendant No.3 is dead, hence, suit against him, is abated, hence this suit is partly decreed.

The defendant No.1 and 2 and their agents or the persons acting on their behalf are hereby restrained from interfering with the peaceful possession and enjoyment of suit Item No.2 and 3 properties by the plaintiff, by way of Permanent Injunction.

The defendant No.1 and 2 and their agents or the persons acting on their behalf are hereby restrained from interfering with the peaceful possession and enjoyment of suit Item No.1 property by the plaintiff, after it is so delivered to him in OS.No.120/2013, by way of Permanent Injunction.

The original judgment shall be kept in O.S.No.120/13 and the copy there of shall be kept in O.S.No.186/2014.

Draw decree accordingly.

(Dictate to the stenographer, transcribed by him, corrected by me, then pronounced in the open court on this the day of 23rd day of April 2021)

(Harisha K.M.)

ADDL. CIVIL JUDGE & JMFC,
MUDIGERE.

ANNEXURES

WITNESSES EXAMINED FOR THE PLAINTIFF

PW-1 : A.K.Shivamurthy

PW-2 : Narasimhamurthy

WITNESSES EXAMINED FOR THE DEFENDANT

DW.1 : Faizal

DW.2 : M.S. Krishnegwoda

DOCUMENTS MARKED FOR THE PLAINTIFF

Ex.P-1 to 3 : RTC extracts.

Ex. P.4 & 5 : Mutation extracts.

Ex.P.6 : ILR

Ex. P.7 : Record of rights

Ex. P.8 : Sketch.

Ex. P.9 : Tax paid receipt.

Ex. P.10 : CC of patta book.

Ex. P.11 & 12 : RTCs.

Ex.P.13 & 14 : M.R. Extracts.

Ex. P.15 : RTC.

Ex. P.16 : ILR

Ex.P.17 : Records of rights.

Ex.P.18 : N.C.

Ex.P.19 : C.C. of answers in O.S.No.124/14.
Ex.P.20 : C.C. of Sektch in O.S.No.124/14 .
Ex.P.21 : C.C. of notice in O.S.124-14.
Ex.P.22 : From No.10.

DOCUMENTS MARKED FOR THE DEFENDANT

Ex. D.1 to 5 : RTC extracts.
Ex. D.6 : C.C. of sale deed.
Ex. D.7 : C.C. of gift deed.

(Harisha K.M)
ADDL. CIVIL JUDGE & JMFC
Mudigere.

(Judgment pronounced in the open court vide its separate Judgment)

ORDER

OS.NO.120/2013

The suit of the plaintiff is hereby partly decreed with costs.

The defendant No.1 is dead. Suit against him, is abated, hence this suit is partly decreed.

The defendant No.4 is directed to deliver vacant possession of the "B" schedule property in favour of the plaintiff, within 3 months from the date of this order.

The defendant No.2 to 4 and their agents or the persons acting on their behalf are hereby restrained from interfering with the peaceful possession and enjoyment of suit item no:2 and 3 properties by the plaintiff, by way of Permanent Injunction.

OS.NO:186/2014

The suit of the plaintiff in OS.No.186/2014, is hereby partly decreed with costs.

The defendant No.3 is dead, hence, suit against him, is abated, hence this suit is partly decreed.

The defendant No.1 and 2 and their agents or the persons acting on their behalf are here by restrained from interfering with the peaceful possession and enjoyment of suit Item No.2 and 3 properties by the plaintiff, by way of Permanent Injunction.

The defendant No.1 and 2 and their agents or the persons acting on their behalf are hereby restrained from interfering with the peaceful possession and enjoyment of suit Item No.1 property by the plaintiff, after it is so delivered to him in OS.No.120/2013, by way of Permanent Injunction.

The original judgment shall be kept in O.S.No.120/13 and the copy there of shall be kept in O.S.No.186/2014.

Draw decree accordingly.

(Harisha K.M.)
ADDL. CIVIL JUDGE & JMFC,
MUDIGERE.