

KACM710003092019



C.R.P.67

Form No.9(Civil)
Title Sheet for
Judgements in
Suits
(R.P.91)

Govt.of Karnataka

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND
J.M.F.C., AT TARIKERE**

Present: Sri.Ramamurthy N. B.A. LL.B.,
Addl. Civil Judge & JMFC, Tarikere.

Dated: 22nd Day of October 2021.

ORIGINAL SUIT NO.80/2019

PLAINTIFF/s :

T.L.Harish S/o T.L.Laxmikantappa, aged
35 years, Agriculturist, R/o Iyanahalli
Village, Doranalu Post, Kasaba Hobli,
Tarikere Taluk.

(Reptd. By : Sri B.N.Kirankumar, Advocate.)

Vs.

DEFENDANT/s:

- 1) Syed Buden S/o Syed Bashir Sab, aged 50
years, Agriculturist, R/o Near K.H.B.
(KEB), C.T.Road, Tarikere Town, Tarikere
Taluk.
- 2) Meenakshamma S/o late Hanumanthappa,
aged 60 years, Agriculturist, R/o

Iyanahalli Village, Doranalu Post, Kasaba
Hobli, Tarikere Taluk.

(D.1 : Exparte

D.2 : B.P.Rajashekar, Advocate.)

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Date of institution of Suit	25.02.2019		
Nature of the suit	Declaration, Possession		
Date of commencement of recording of evidence	04.09.2019		
Date on which Judgment was Pronounced	22.10.2021		
Total duration	Year/s	Month/s	Day/s
	02	07	27

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J U D G M E N T

The plaintiff has filed this suit against the defendant for the relief of declaration that, he is the absolute owner of 'A' schedule property and for possession of encroached suit 'B' schedule property from the defendant.

2. Brief facts of the plaintiff's case are as under:-

The plaintiff is the absolute owner and in possession of suit 'A' schedule property bearing Sy.No.47/5

measuring 0.25 guntas situated at Iyanahalli village, Tarikere Taluk. The same was acquired through family partition held between himself, his father and brothers.

3. The defendant No.1 was the owner of the property which is situated towards the western side of suit schedule property. The 1st defendant delivered the possession of his property in favour of 2nd defendant on lease basis and now the defendant No.2 is in possession and enjoyment of the property of 1st defendant.

4. The plaintiff has given application to the survey department to make hudbasth and phode of suit 'A' schedule property. In pursuance of the application, the survey department, Tarikere has given notice to the neighbour of suit 'A' schedule property and visited the spot on 17.04.2017 and given report to the effect that the defendant No.2 has encroached 0.10 guntas in suit 'A' schedule property which is 'B' schedule property. The same was came to the knowledge of the defendants who were present at the time of survey work. Then the plaintiff requested the defendants to hand over the

encroached portion to him, for which the defendants have postponed the same by one or other pretext, but does not keep up their words. Having no alternate remedy, on 14.01.2019 the plaintiff got issued legal notice to the defendants to deliver the vacant possession of 'B' schedule property and the same was served on them. Despite of the same, the defendant neither replied nor complied. Hence, plaintiff has filed present suit for declaration and possession.

5. In pursuance of suit summons, the defendant No.1 did not appear before the court and consequently, he was placed exparte. The defendant No.2 appeared before the court through his counsel, but not filed written statement in spite of sufficient opportunity.

6. Thereafter the plaintiff examined himself as PW.1 and produced 13 documents and got marked as Ex.P.1 to 13.

7. Heard arguments and perused the materials on record.

8. The points for my consideration are :

- 1) **Whether the plaintiff proves that, he is the absolute owner of suit 'A' schedule property as stated in the plaint?**
- 2) **Whether the plaintiff proves that, 'B' schedule property is part and parcel of 'A' schedule property and same was encroached by defendants as stated in the plaint?**
- 3) **Whether the plaintiff is entitled for the relief of declaration and recovery of possession as sought for?**
- 4) **What order or decree?**

9. The court findings to the above points are as follows:-

Point No.1 : In the Affirmative,

Point No.2 : In the Affirmative,

Point No.3 : In the Affirmative,

Point No.4 : As per the final order,

for the following:

REASONS

10. **POINT NO.1 TO 3** : As these points are inter-linked with each other, in order to avoid repetition of facts, these points are taken up together for common discussion.

11. In order to prove his case, the plaintiff got himself examined as PW.1 and got marked documents as Ex.P.1 to 13. In the chief examination affidavit, he has reiterated the averments of the plaint. According to PW.1, he is the absolute owner of suit 'A' schedule property measuring 0.25 guntas in Sy.No.47/5 and same was acquired by him through family partition held between himself, his father and brothers. The 'B' schedule property measuring 0.10 guntas is part and parcel of 'A' schedule property. The defendants have encroached B schedule property. It is relevant to note that the defendants have not filed any written statement and not cross examined PW.1 in spite of sufficient opportunity. Hence, the contention of PW.1 remained unchallenged.

12. PW.1 has relied on Ex.P.1 to 13. Ex.P.1 is the copy of hudbasth sketch of Sy.No.47/5, Ex.P.2 is the RTC extract of Sy.No.47/5, Ex.P.3 is the RTC extract of Sy.No.47/1, Ex.P.4 is the copy of legal notice dated 14.01.2019, Ex.P.5 is the 2 postal receipts, Ex.P.6 is the postal acknowledgement, Ex.P.7 is the postal track consignment letter, Ex.P.8 is the

certified copy of hudbasth sketch of Sy.No.47/5, Ex.P.9 is the certified copy of mahazar, Ex.P.10 is the certified copy of notice, Ex.P.11 is the sale deed dated 20.09.1961, Ex.P.12 is the certified copy of sale deed 02.02.1962 and Ex.P.13 is the digital copy of partition deed dated 11.12.2014.

13. On perusal of contents of Ex.P.1 and 8 to 10 shows that the surveyor conducted the survey work in respect of suit 'A' schedule property and as per mahazar, in Sy.No.47/5, the cultivator of Sy.No.47/1 has encroached 10 guntas of land. Ex.P.2 shows that the plaintiff name mentioned as possessor to suit 'A' schedule property in the year 2017-18. Ex.P.3 shows that the name of 1st defendant mentioned as possessor of property bearing Sy.No.47/1. The contents of Ex.P.11 shows that Syed Basheer has executed sale deed in favour of Ugrappa S/o Honnappa in respect of property bearing Sy.No.47 measuring 4 acres. The contents of Ex.P.12 shows that the said Ugrappa has executed sale deed in favour of Lakshmikantha and Mallamma in respect of said property on 02.02.1962. Ex.P.13 shows that there was a partition

between the plaintiff, his brother Vishwanath and his father Lakshmikanthappa in respect of their family properties along with suit schedule property and in said partition the suit schedule property is fallen to the share of plaintiff.

14. By considering the oral and documentary evidence of PW.1 which shows that the suit property was fallen to the share of plaintiff in their family partition as stated in the plaint. The contents of Ex.P.1, 8 to 10 are clearly shows that the 1st defendant has encroached the suit 'B' schedule property in suit 'A' schedule property. It is relevant to note that in spite of sufficient opportunity, the defendants have not filed their written statement and not cross examined the PW.1. Such circumstances, the contention of the plaintiff is remained unchallenged. The evidence of PW.1 is corroborating with the averments of the plaint. Hence, by considering the evidence of PW.1, opinion of this court is that, the PW.1 has proved that he is the absolute owner of the suit 'A' schedule property and suit 'B' schedule property is the part and parcel of suit 'A' schedule property and the

defendants have encroached the suit 'B' schedule property. Therefore, view of this court is that, the plaintiff is entitled for the relief as sought for. Therefore, this court answered Point No.1 to 3 in the Affirmative.

15. **POINT NO.4** : For the foregoing discussion and reasons assigned by this court and answer given to the Point No.1 to 3, this court proceed to pass the following:-

:-ORDER:-

The suit of the plaintiff is decreed with costs.

It is declared that the plaintiff is the absolute owner of suit 'A' schedule property and suit 'B' schedule property is part and parcel of suit 'A' schedule property.

The defendants are directed to handover the possession of 'B' schedule property to the plaintiff within two months, Failing which the plaintiff is at liberty to recover the same through due process of law.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed by her, corrected by me and

then pronounced in the open Court on this the 22nd day of October 2021.)

sd/-

(RAMAMURTHY N.)
ADDL. CIVIL JUDGE AND
J.M.F.C, TARIKERE.

ANNEXURE

List of witness examined for the plaintiff:-

PW.1 : T.L.Harish

List of documents exhibited for the plaintiff:-

Ex.P.1 : Copy of hudbasth sketch of Sy.No.47/5
Ex.P.2 ; RTC extract of Sy.No.47/5
Ex.P.3 : RTC extract of Sy.No.47/1
Ex.P.4 : Copy of legal notice dated 14.01.2019
Ex.P.5 : 2 postal receipts
Ex.P.6 : Postal acknowledgement
Ex.P.7 : Postal Track consignment
Ex.P.8 : Certified copy of hudbasth sketch
Ex.P.9 : Certified copy of mahazar
Ex.P.10 : Certified copy of notice
Ex.P.11 : Sale deed dated 20.09.1961
Ex.P.12 : Certified copy of sale deed dt: 02.02.1962
Ex.P.13 : Digital copy of partition deed dt: 11.12.2014.

List of witnesses examined for the defendant:-

- Nil -

List of documents exhibited for the defendant:-

- Nil -

sd/-

ADDL. CIVIL JUDGE AND
J.M.F.C, TARIKERE.