

JUDGMENT
KACM710013262012

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O.S.NO.288/2012



C.R.P.67

Form No.9(Civil)
Title Sheet for
Judgments 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: 6th Day of April 2022

ORIGINAL SUIT NO.288/2012

PLAINTIFF/s

:

T.V.Manjunatha S/o late Vitalappa, aged
57 years, Agriculturist, R/o 6th Cross,
Nagappa Colony, Tarikere Town.

(Reptd. By : Sri T.L.Prakash, Advocate.)

Vs.

DEFENDANT/s:

- 1) Narayana S/o late Kandiyanna, aged 50
years,
1(a)Smt.Susheelamma W/o late
Narayana, aged 46 years,
1(b) Mamtha D/o late Narayana, aged 24
years,
- 2) Thimmakka W/o late Kandiyanna, aged
75 years,
- 3) Ramya @ Putti, D/o Narayana, aged 25
years,



All are R/o 6th Cross, Nagappa Colony,
Tarikere Town.

(Reptd. By : Sri H.Shivashankara Naik and
Sri K.L.Lingaraju, Advocates.)

Date of institution of Suit	04.09.2012		
Nature of the suit	Declaration, Possessions & Mesne Profits		
Date of commencement of recording of evidence	01.07.2014		
Date on which Judgment was Pronounced	06.04.2022		
Total duration	Year/s	Month/s	Day/s
	09	07	02

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J U D G M E N T

The plaintiff has filed this suit against the defendants for the relief of declaration that, the plaintiff is the absolute owner of suit 'A' schedule property and for delivery of possession of suit 'B' schedule property to the plaintiff after evicting the defendants and for mesne profits.



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

The plaintiff has purchased the suit 'A' schedule property bearing Sy.No.35/7 measuring 6 guntas situated at Tarikere village as per S.R.No.4554/2011-12 on 02.01.2012 from one Smt.Lakshamma W/o late Erappa. The vendor of the plaintiff put him in possession and enjoyment of the suit 'A' schedule property. The khata of the suit property also mutated in favour of the plaintiff as per sale deed on 16.07.2012. Since the date of purchase, the plaintiff is in possession of suit 'A' schedule property. In the month of January 2012, when plaintiff went to Shabarimale for 15 days, the defendants have encroached some portion of suit 'A' schedule property and put up temporary shed. After return, the plaintiff came to know about the encroachment of some portion of suit 'A' schedule property by the defendants. The plaintiff orally called upon the defendants to deliver the encroached portion of suit 'A' schedule property. But the



defendants have told that they have purchased the property from one Suresh, Manju and Veena who are son and daughter of late Kenchappa and requested to measure both properties.

3. Thereafter, the plaintiff got measured the suit 'A' schedule property through private surveyor and came to know that the defendants have encroached some portion of suit 'A' schedule property. Again the plaintiff called the defendants to handover the encroached property, but the defendants have illegally renovated the shed instead of handing over the possession. Hence, the plaintiff has lodged complaint to the police on 06.08.2012, but the police have advised to approach the civil court.

4. After measurement, the plaintiff came to know that the defendants have encroached property measuring 4½ guntas which is suit 'B' schedule property. The suit 'B'



schedule property is a part and parcel of suit 'A' schedule property. The defendants are in wrongful possession of the suit 'B' schedule property since January 2012. Finally on 01.09.2012 the plaintiff orally called upon the defendants to hand over the suit 'B' schedule property, but the defendants have gave untenable reply to the plaintiff. Hence, the plaintiff having no alternative remedy, has filed this suit for declaration, recovery of possession and for mesne profits.

5. The court issued suit summons to defendants, same was served on them. The defendants No.1 to 3 appeared before the court through their counsels. The defendant No.1 filed written statement and other defendants adopted the same by filing memo. During the trial, the defendant No.1 died and his legal representatives defendants No.1(a) and (b) are brought on record and they have also adopted the written statement filed by defendant No.1. After amendment of



plaint, the defendant No.3 filed additional written statement and other defendants adopted the same.

6. In the written statement, the defendants have denied the entire averments of plaint and stated that they have not encroached any property of the plaintiff. There is no relation between their property and the plaintiff's property. The plaintiff has not produced any documents to show that where his property is situated and defendants have encroached the same. Earlier the defendants have erected shed and dug lavatory pit in their property and in possession of the same since 20 years. The plaintiff has created survey sketch by colluding with the survey officials and filed this false suit against the defendants. The plaintiff has purchased the suit property recently and he has no information that, where his property is situated.



7. The defendants No.1 and 2 have purchased the property in Sy.No.35/3 measuring 1.12 guntas out of 02.17 guntas (measuring in feet 30 x 70) from Gangamma W/o late Poojari Kariyappa and others as per S.R.No.203/92-93 on 13.05.1992. As per the said sale deed, the khata of the property mutated in the name of defendants No.1 and 2 as per M.R.No.5/92-93. During change of khata, survey number was wrongly mentioned as 35/1 instead of 35/3. In this regard, they have filed appeal before the Assistant Commissioner to rectify the same. From the date of purchase of property, they are in possession. During purchase of the suit property, the plaintiff not made measurement and without notice to the defendants has created revenue documents and filed this false suit. The plaintiff has filed this suit only to grab the defendants property. Hence, prays for dismiss the suit with cost.



8. In the additional written statement, the defendants have stated that, the measurement of the suit property and boundaries are false and imaginary. The plaintiff has not known that where the suit property is situated. The boundaries mentioned in the sale deed are not correct. The plaintiff has to prove the sale deed. There is no pakka phodi in the property of Sy.No.35. Without measuring the entire property, it is unable to say that, where suit property is situated. The defendants are owners of 1¾ guntas property and in possession of the same since 20 years by constructing the house. The plaintiff is not entitled for the relief as sought for. The possessor of suit property are Lakshamma, Erappa, Gangamma and others and they are necessary parties to the suit. Hence, prays for dismiss the suit.

9. On the basis of pleadings and materials on record the following issues and additional issue have been framed :



ISSUES

- 1) Whether the plaintiff proves that, by virtue of registered sale deed dated 02.01.2012 he has purchased plaint 'A' schedule property as averred in the plaint?
- 2) Whether the plaintiff further proves that, the plaint 'B' schedule property is the part and parcel of plaint 'A' schedule property?
- 3) If so, whether the plaintiff further proves that the defendant has encroached upon plaint 'B' schedule property as averred in the plaint?
- 4) Whether the plaintiff is entitled for the relief of declaration as sought for?
- 5) Whether the plaintiff is entitled for recovery of possession of plaint 'B' schedule property as sought in the plaint?
- 6) Whether the plaintiff is entitled for mesne profits as prayed for?
- 7) What order or decree?

Additional Issue :

- 1) Whether the defendants prove that, the suit of the plaintiff is bad for non-joinder of necessary parties?



10. In order to prove his case, the plaintiff examined himself as PW.1 and got marked 7 documents as Ex.P.1 to 7 and closed his side. The Ex.P.1 is the registered sale deed dated 02.01.2012, Ex.P.2 is the certified copy of M.R.No.H40/2011-12, Ex.P.3 is the RTC of Sy.No.35/7 for the year 2012-13. Ex.P.4 and 5 are the endorsement issued by Tarikere Police, Ex.P.6 is the copy of hudbust sketch of Sy.No.35/7. Ex.P.7 photo got marked by confronting the same to DW.1.

11. In support of their case, the defendant No.3 examined herself as DW.1 and got marked documents as Ex.D.2 to 21 and closed their side. Ex.D.1 photo got marked by confronting the same to PW.1. Ex.D.2 is the certified copy of registered sale deed dated 13.05.1992, Ex.D.3 is the certified copy of M.R.No.5/92-93, Ex.D.4 to 16 are the certified copies of RTC extracts, Ex.D.17 is the certified copy of photo, Ex.D.18 and 19 are the certified copy of complaint



given by defendant No.1 to the Tarikere Police, Ex.D.20 is the certified copy of police notice, Ex.D.21 is the certified copy of 2 postal acknowledgements.

12. During the trial, the surveyor ADLR appointed as court commissioner and after measurement work of the suit property, he has filed his report before the court and examined himself as CW.1 and got marked 16 documents as Ex.C.1 to 16. Ex.C.1 is the commissioner warrant, Ex.C.2 and 3 are memo of instructions, Ex.C.4 is 10 postal receipts, Ex.C.5 and 6 are the copy of notices, Ex.C.7 and 8 are statement given by plaintiff, Ex.C.9 is the sketch of Sy.No.35/7, Ex.C.10 and 11 are answer given to memo of instructions, Ex.C.12 is the report of the court commissioner and Ex.C.13 to 16 are returned postal covers.

13. Heard arguments of counsels for plaintiff and defendants and perused the materials on record.



14. The court findings to the above issues are as follows:

Issue No.1 : In the Negative,
Issue No.2 : In the Negative,
Issue No.3 : In the Negative,
Issue No.4 : In the Negative,
Issue No.5 : In the Negative,
Issue No.6 : In the Negative,
Addl. Issue No.1 : In the Negative,
Issue No.7 : As per the final order,

for the following:

REASONS

15. **ISSUE NO.1 AND 2** : These issues are inter related with each other. Hence, in order to avoid repetition of facts and findings, these issues are taken up together for common discussion.

16. In order to prove the issue No.1 and 2, the PW.1 has taken contention that, he is the absolute owner of the suit 'A' schedule property and the same was purchased from one



Smt.Lakshamma W/o late Erappa through registered sale deed S.R.No.4554/2011-12 dated 02.01.2012. The khata also mutated in his name on 16.07.2012. The suit 'B' schedule property is part and parcel of 'A' schedule property and same was encroached by the defendants.

17. The defendants have denied the contention of PW.1 stating that there is no relation between their property and plaintiff property. They have purchased the property in Sy.No.35/3 in the year 1992 measuring 1.12 guntas through registered sale deed from Gangamma W/o late Poojari Kariyappa on 13.05.1992. The khata also changed in their names and they are in possession of the said property since the date of purchase. The plaintiff has purchased the suit schedule property without making measurement, The boundaries and measurement of suit property are false and imaginary, boundaries of the property mentioned in the sale deed are not correct.



18. The PW.1 has relied Ex.P.1 to 3 which are shows that, one Smt.Lakshamma W/o late Erappa has sold suit 'A' schedule property with another property to the plaintiff on 02.01.2012 through registered sale deed and khata of the said property changed in favour of the plaintiff on 16.07.2012 as stated in the plaint

19. During cross examination PW.1 deposed that he has purchased the suit property from Lakshamma and same was fallen to her share as per partition of court order. The Lakshamma has filed suit against her sisters. One of her sister name is Yashodamma and he don't know the name of other sister. He has purchased 6 guntas of land and Lakshamma has sold out remaining land to Dhananjaya, Murthy, Suresha and Nagaraj, measuring 5 guntas each. At the time of purchase, he got measured the suit property from surveyor. He don't know that, Yashodamma has sold property of her share to defendants. He don't know that, on



which portion, property purchased by him is situated in original survey Number. Earlier the khata of the suit property was stood in the name of parents of Lakshamma. As per court order, 24 guntas of land each came to Lakshamma, Gangamma and Yashodamma. The defendants have purchased 1.12 guntas in Sy.No.35/1 and same was changed as 35/7. He don't know about phodi of suit property before purchase. The original survey number of suit property is 35/3. It is true that the western boundary of suit 'B' schedule property mentioned as defendants property. It is true that his property and defendants property are different. He denied that he has made phodi in the defendants property and the defendants have not encroached suit property.

20. The DW.1 has relied Ex.D.2 to 20. The contents of Ex.D.2 shows that the defendants No.1 and 2 have purchased the property measuring 30 x 70 feet in Sy.No.35/3 from Gangamma W/o Poojari Kariyappa, Suresh, Manju, Veena



and Yashodamma on 13.05.1992 as stated in the written statement. Ex.D.3 and 14 shows that, the said property mutated in the name of defendants No.1 and 2 as per M.R.No.5/1992-93. Ex.D.4 to 8 shows that Sy.No.35/3 stood in the name of Gangamma W/o Poojari Kariyappa since 1968-69 to 1991-92. Ex.D.9 to 14 shows that Sy.No.35/1 stood in the name of Gangamma W/o Poojari Kariyappa since 1968-69 to 1991-92. Ex.D.15 shows that the name of defendants No.1 and 2 mentioned as joint possessors of 01.12 guntas in Sy.No.35/1 for the year 2012-13. Ex.D.18 and 19 shows that the defendant No.1 has given the complaint against plaintiff on 18.08.2012 and 05.10.2012. Ex.D.20 shows that the police have issued notice to defendant No.1 on 10.10.2012.

21. During the cross examination the DW.1 deposed that her father and grandmother Thimmamma purchased 01.12 guntas of land from Gangamma in Sy.No.35/3. They have filed appeal before the Tahasildar for rectification of



survey number. In the computerized RTC survey number of their property wrongly mentioned as 35/1 instead of 35/3. It is true that their property and plaintiff's property are different.

22. The counsel for the plaintiff argued that the plaintiff is the absolute owner of suit 'A' schedule property as per registered sale deed Ex.P.1 and khata also mutated in his name and he was in possession of suit 'A' schedule property since the date of purchase.

23. The counsel for the defendants argued that the plaintiff is not absolute owner of the suit A property, he has not placed any original documents which shows that, the vendor of the plaintiff has got suit property through partition and she has title over the same. Without showing title of the vendor, Ex.P.1 is not valid and plaintiff will not get any right over the suit property. The defendants have purchased the



property in the year 1992 and they are residing in the said property by constructing the house.

24. By considering the oral and documentary evidence of both parties, it shows that, the plaintiff has purchased the suit 'A' schedule property from Smt.Lakshamma W/o late Erappa on 02.01.2012 as per Ex.P.1 and khata was mutated in his name. The Ex.D.2 shows that, the defendants have purchased 30 X 70 feet of land in the year 1992 through registered sale deed from Gangamma W/o Poojari Kariyappa and others. According to PW.1 he is the absolute owner of suit 'A' schedule property measuring 6 guntas through ExP.1 sale deed. The suit 'B' schedule property is part and parcel of 'A' schedule property and same was encroached by the defendants. The DW.1 has denied the contention of PW.1, Ex.P.1 sale deed, measurement and boundaries of suit 'A' schedule property. According to DW.1 they have not encroached 'B' schedule property and they have purchased



property measuring 30 X 70 through registered sale deed Ex.D.2 on 13.05.1992. They are in possession of the said property since the date of purchase by constructing the house. It is relevant to note that, the PW.1 deposed in his evidence that, the property measuring 24 guntas is fallen to the share of Lakshamma in the partition and he has purchased the 'A' schedule property measuring 6 guntas out of said property. During the purchase of the suit property, he has got measured the same through surveyor and he don't know that, the property purchased by him is situated where.

The relevant portion of evidence of PW.1 reads as follows :

ದಾವಾ ಸ್ವತ್ತನ್ನು ನಾನು ಲಕ್ಷ್ಮಮ್ಮನವರಿಂದ ಖರೀದಿ ಮಾಡಿರುತ್ತೇನೆ. ಲಕ್ಷ್ಮಮ್ಮನವರಿಗೆ ನ್ಯಾಯಾಲಯದ ಆದೇಶದಂತೆ ವಿಭಾಗದ ಪ್ರಕಾರ ದಾವಾ ಸ್ವತ್ತು ಅವರ ಹಿಸ್ಸೆಗೆ ಬಂದಿರುತ್ತದೆ. ಲಕ್ಷ್ಮಮ್ಮನವರು ಅವರ ಅಕ್ಕ ತಂಗಿಯರ ವಿರುದ್ಧ ದಾವೆಯನ್ನು ದಾಖಲು ಮಾಡಿದ್ದರು.

ಲಕ್ಷ್ಮಮ್ಮನವರಿಗೆ ಬಂದ ಸ್ವತ್ತಿನಲ್ಲಿ ನಾನು 6 ಗುಂಟೆ ಜಮೀನನ್ನು ಖರೀದಿ ಮಾಡಿರುತ್ತೇನೆ. ಲಕ್ಷ್ಮಮ್ಮನವರ ಸ್ವತ್ತಿನಲ್ಲಿ ಉಳಿದ ಜಮೀನನ್ನು ಅವರು ಬೇರೆಯವರಿಗೆ ಮಾರಾಟ ಮಾಡಿರುತ್ತಾರೆ. ಲಕ್ಷ್ಮಮ್ಮನವರು ಧನಂಜಯ, ಮೂರ್ತಿ, ಸುರೇಶ ಹಾಗೂ ನಾಗರಾಜುರವರಿಗೆ ಮಾರಾಟ ಮಾಡಿರುತ್ತಾರೆ. ಅವರೆಲ್ಲರಿಗೂ ತಲಾ 5 ಗುಂಟೆ ಜಮೀನನ್ನು ಮಾರಾಟ ಮಾಡಿರುತ್ತಾರೆ. ನಾನು ದಾವಾ ಸ್ವತ್ತನ್ನು ಖರೀದಿ ಮಾಡುವಾಗ ಸರ್ವೆಯರ್ ರವರ ಮುಖಾಂತರ ಅಳತೆ ಮಾಡಿಸಿ ನಂತರ ಖರೀದಿ ಮಾಡಿರುತ್ತೇನೆ. ಲಕ್ಷ್ಮಮ್ಮನವರು ದಾವಾ ಸ್ವತ್ತನ್ನು ಅಳತೆ



ಮಾಡಿಸಿ ಆ ಸ್ವತ್ತು ನನ್ನದು ಎಂದು ಹೇಳಿದ ನಂತರ ನಾನು ಸ್ವತ್ತನ್ನು ಖರೀದಿ ಮಾಡಿರುತ್ತೇನೆ.

ನಾನು ಖರೀದಿ ಮಾಡಿರುವ ಸ್ವತ್ತು ಮೂಲ ಸರ್ವೆ ನಂಬರಿನ ಯಾವ ಭಾಗದಲ್ಲಿ ಬರುತ್ತದೆ ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ.

ನ್ಯಾಯಾಲಯದ ಆದೇಶದಂತೆ ತಲಾ 24 ಗುಂಟೆ ಜಮೀನು ಲಕ್ಷಮ್ಮ, ಗಂಗಮ್ಮ ಮತ್ತು ಯಶೋದಮ್ಮನವರಿಗೆ ಬಂದಿರುತ್ತದೆ.

ನಾನು ಸರ್ವೆ ನಂ.35/3 ಸ್ವತ್ತನ್ನು ಖರೀದಿಸಿದ್ದು ಅದು ಈಗ 35/7 ಆಗಿರುತ್ತದೆ.

25. According to above said evidence of PW.1, it is clear that he has purchased the suit 'A' schedule property from Lakshamma in Sy.No.35/3 out of 24 guntas which is fallen to the share of said Lakshamma and he don't know that where the said property is situated in the original survey number. Except Ex.P.1 to 3, the PW.1 has not placed any other documents which shows that the property is fallen to the share of Smt.Lakshamma and he has purchased the suit 'A' schedule property out of said property by measuring the same. The contents of Ex.P.1 shows that, the vendor of the plaintiff stated that the sale deed schedule properties are



their self acquired property and there is no contents regarding her share in the partition as deposed by the PW.1. The boundaries of suit 'A' schedule property mentioned in sale deed as East by block No.2, West by lot hissa No.35/3, North by lot hissa No.34 and South by lot hissa No.35/9. But, the PW.1 has not placed any documents which shows that the suit property is situated within the boundaries as mentioned in Ex.P.1 sale deed. In Ex.P.6 boundaries of Sy.No.35/7 shows as East by lot hissa No.10, West and South by lot hissa No.35/3 and North by Sy.No.34 which shows different to the boundaries of the sale deed. The PW.1 deposed that he has purchased the property in Sy.No.35/3 and same was changed as 35/7 and he don't know that the property purchased by him is situated on which portion of original survey number. It is relevant to note that, Ex.D.2, 3, 6 to 8 are shows that the property bearing Sy.No.35/3 of Tarikere village is stood in the name of Gangamma W/o Poojari



Kariyappa measuring 2.17 acres for the year 1981-82 to 1991-92 and defendants No.1 and 2 have purchased the property measuring 30 x 70 feet out of said property in the year 1992 and khata also mutated in their name.

26. By considering the facts and circumstances of the case this court would like to rely the judgment of the Hon'ble Supreme Court and Hon'ble High Court which reads as follows :

In the case of Union Of India & Ors vs Vasavi Co-Op. Housing Society, CIVIL APPEAL NO.4702 OF 2004 on 7th January, 2014. The Hon'ble Supreme court observed as follows :

The Plaintiffs have to show, independent of those entries, that the plaintiff's predecessors had title over the property in question and it is that property which they have purchased.

We reiterate that, the plaintiff has to succeed only on the strength of his case and not on the weakness of the case set up by the defendants in a suit for declaration of title and possession.

In the case of C.Radhakrishnama Naidu and others Vs. Government of Andra Pradesh



represented by its principal Secretary, Revenue Department and others. Writ Petition No.24587/2014 dated 01.06.2015, The Hon'ble Andra Pradesh High Court observed by relying the decision of the Hon'ble Supreme Court as follows :

The Registration of a document does not by itself confer or create title in favour of the vendee/transferee under the registered document. The registration of a document by itself would not create or transfer title to the transferee. The registration simplicitor is well appreciated by the legal maxim nemo dat quod non habet meaning no person can transfer a better title than what he possess in the property transferred.

In Pusupuleti Bala Gangadhar Vs. State of Andra Pradesh and others, it is held as under: As held in Raavisathish case (supra) - Mere registration of the property will not create title in the purchaser and that if the vendor has no title in the property, the purchaser will not derive any title only on account of registration and that registration of document will not absolve the vendor and the purchaser from the legal proceedings that may be initiated by the state for recovery of possession of the land if the same is proved to belong to the Government.

Therefore, mere registration of the document is not conclusive on the right or title of the property covered by the deed. The right or title is dependent on the fact situation of each case or dispute and the substantive law applicable to the lis.



27. According to above said observations of the Hon'ble Supreme Court and Hon'ble High Court, in a suit for declaration of title and possession, the plaintiff has to succeed only on the strength of his case, not on the weakness of the case set up by the defendants. The Registration of a document does not by itself confer or create title in favour of the vendee/transferee under the registered document. Mere registration of the document is not a conclusive on the right or title of the plaintiff over the property covered by the deed. In the present case the defendants have denied the sale deed, title of the plaintiff, boundaries and existence of the suit 'A' schedule property. Therefore the plaintiff has to prove that, his vendor has right and title over the suit 'A' schedule property and same was transferred to him through sale deed Ex.P.1. The PW.1 except placing Ex.P.1 to 3, has not placed any other documents which shows that, his vendor Lakshamma has got right and title over the suit 'A' schedule



property and said property is situated within boundaries mentioned in the sale deed. Such circumstance, the evidence of PW.1 creates ambiguity and doubt regarding his title over the suit 'A' schedule property by virtue of sale deed Ex.P.1. Hence, in absence of sufficient evidence, the contention of PW.1 regarding his title over the suit 'A' schedule property is not acceptable. Therefore, opinion of this court is that, PW.1 has failed to prove that he is the absolute owner of suit 'A' schedule property by virtue of the sale deed and suit 'B' schedule property is part and parcel of 'A' schedule property. Hence, this court answered Issue No.1 and 2 in the Negative.

28. **ISSUE NO.3** : In order to prove issue No.3, the PW.1 has taken contention that the defendants have encroached plaint 'B' schedule property measuring 4½ guntas out of suit 'A' schedule property. During the cross examination, the PW.1 deposed that the defendants have encroached 4½ guntas of his property which is purchased from



Lakshamma. The original survey number of suit property is 35/3 and same was changed as 35/7. He denied the suggestion that the defendants have not encroached suit 'B' schedule property.

29. The DW.1 has denied the contention of PW.1 in respect of encroachment of suit 'B' schedule property and taken contention that, the measurement and boundaries of the suit schedule property are not correct and the PW.1 don't know that where his property is situated. During the evidence the court commissioner/CW.1 deposed that, at the time of measurement of suit property, the plaintiff and another were present, defendants were not present. After measurement work, he came to know that Thimmakka has encroached 1½ guntas, Mamatha and Ramya have encroached 3 guntas of land in Sy.No.35/7. There is a RTC in the name of Narayanappa in respect of Sy.No.35/1 and 35/3. During cross examination, he deposed that, the



Sy.No.35/1 is phoded, but not made hudbust. It is true that he has to measure the properties bearing Sy.No.35/1, 35/3 and 35/7 as per memo of instructions of plaintiff and defendants. He has made measurement work of property bearing Sy.No.35/7 only. The defendants have not present and not given any information regarding Sy.No.35/1 and 35/3. It is unable to say that who has made how much encroachment as per original sketch. He has not tried to know that whose property is situated towards western and northern side of suit property. It is true that as per instructions of plaintiff, he has made measurement work. Upon perusal, the Ex.C.9 shows that the defendants have encroached 4½ guntas of land in Sy.No.35/7 as stated by CW.1.

30. The evidence of CW.1 clearly shows that he has not measured the property Sy.No.35/1 and 35/3 as per memo of instructions of defendants. He has measured Sy.No.35/7 as



per instructions of the PW.1. It is relevant to note that the PW.1 in his evidence clearly deposed that original survey number of 35/7 is 35/3 and he don't know that his property is situated which side of original survey number. The Ex.D.2, 4 to 8 shows that the defendants have purchased the property in Sy.No.35/3. Hence, by considering the evidence of both parties and C.W.1, the court commissioner/CW.1 has not measured the properties of both parties as per memo of instructions. It is relevant to note that for the reasons discussed in issue No.1 and 2 and answer given to the same, the PW.1 has failed to prove that he is the absolute owner of the suit 'A' schedule property and suit 'B' schedule property is part and parcel of suit 'A' schedule property. Hence, by considering the oral and documentary evidence of both parties, opinion of this court is that, the PW.1 has failed to prove that the defendants have encroached 'B' schedule



property as stated in the plaint. Hence, this court answered Issue No.3 in the Negative.

31. **ISSUE NO.4 TO 6** : These issues are inter related with each other. Hence, in order to avoid repetition of facts and findings, these issues are taken up together for common discussion.

32. The suit of the plaintiff is for declaration, recovery of possession and mesne profits. For the reasons discussed in issue No.1 to 3 and answered given to the same, the PW.1 has failed to prove that, he is the absolute owner of suit 'A' schedule property and suit 'B' schedule property is part and parcel of suit 'A' schedule property and defendants have encroached suit 'B' schedule property. Therefore, opinion of this court is that, the PW.1 is not entitle for the relief of declaration, recovery of suit 'B' schedule property and mesne



profits. Hence, this court answered Issue No.4 to 6 in the Negative.

33. **ADDITIONAL ISSUE NO.1** : In order to prove additional issue No.1, the defendants have taken contention that the suit of the plaintiff is bad for non-joinder of necessary parties. According to the defendants, Lakshamma, Erappa and Gangamma and others are having possession of the property which is claimed by the plaintiff and they are necessary parties to the suit. It is relevant to note that during the trial, the defendants have not placed any sufficient evidence and did not raise any question regarding non-joinder of necessary parties. Therefore, in the absence of sufficient materials, the contention of defendants is not acceptable. Hence, opinion of this court is that, the defendants have failed to prove that the suit of the plaintiff is bad for non-joinder of necessary parties. Hence, this court answered Additional Issue No.1 in the Negative.



34. **ISSUE NO.7** : For the foregoing discussion and reasons assigned by this court and answer given to the issue No.1 to 6 and additional issue No.1, this court proceed to pass the following :

ORDER

The suit of the plaintiff is dismissed with cost.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed by her, corrected by me and then pronounced in the open Court, on this the 6th day of April 2022.)

sd/-

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

ANNEXURE

List of witness examined for the plaintiff:-

PW.1 : Manjunatha T.V.

List of documents exhibited for the plaintiff:-

Ex.P.1 : Registered sale deed dated 02.01.2012
Ex.P.2 : Certified copy of M.R.No.H40/2011-12
Ex.P.3 : RTC of Sy.No.35
Ex.P.4 & 5 : Endorsement issued by Tarikere Police

KACM710013262012



Ex.P.6 : Copy of hudbust sketch
Ex.P.7 : Photo

List of witnesses examined for the defendants:-

DW.1 : Mamatha

List of documents exhibited for the defendants:-

Ex.D.1 : Photo
Ex.D.2 : Certified copy of registered sale deed
Ex.D.3 : Certified copy of M.R.No.5/92-93
Ex.D.4 to 16 : Certified copies of RTC extracts
Ex.D.17 : Certified copy of photo
Ex.D.18 & 19 : Certified copy of complaint
Ex.D.20 : Certified copy of police notice
Ex.D.21 : Certified copy of 2 postal acknowledgements

List of witness examined as court commissioner:

CW.1 : Madhusudhana

List of documents exhibited by court commissioner:

Ex.C.1 : Commissioner Warrant
Ex.C.2 & 3 : Memo of instructions
Ex.C.4 : 10 postal receipts
Ex.C.5 & 6 : Copy of notices
Ex.C.7 & 8 : Statement given by plaintiff
Ex.C.9 : Sketch of Sy.No.35/7
Ex.C.10 & 11 : Answer given to memo of instructions
Ex.C.12 : Report of the court commissioner
Ex.C.13 to 16 : Returned postal covers

sd/-

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