

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

Present : SMT.PAVITHRA.M.D, B.A., LL.B.,
C/c. Addl. Civil Judge & JMFC. Tarikere.

OS. No.380/2016

Dated this 25th Day of February 2019.

Plaintiff : Ranbgappa.T,
S/o Thimmappa @ Thimmana,
Aged about 45 years,
Agriculturist,
R/o Mudigere Village,
Ajjampura Hobli,
Tarikere Taluk.

(Reptd. By :Sri.K.Chandrappa-Advocate)

V/s

Defendant: Hanumanthappa,
S/o Biliyiappa,
Aged about 70 years.
R/o Mudigere Village,
Ajjampura Hobli,
Tarikere Taluk.

(Reptd. By :Sri.S.N.Mallegowda-Advocate)

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- | | | |
|--------------------------------|---|----------------------|
| 1. Date of institution of Suit | : | 07-10-2016 |
| 2. Nature of the suit | : | Permanent Injunction |

3. Date of commencement of recording : 20-02-2018
of evidence
4. Date on which Judgment was : 25-02-2019
Pronounced

Total duration	Year/s	Month/s	Day/s
	02	04	18

J U D G M E N T

This suit is for permanent injunction in respect of the suit schedule property.

The contextual facts are:-

2. That, one Thimmappa @ Thimmanna S/o Ranganna is the father of the plaintiff and he died on 16.06.1986. The suit property was granted in favour of the plaintiff's father under darkasth. That after the demise of the said Thimmappa, a partition was took place in respect of the joint family properties under which, the suit property was fell to the share of the plaintiff. Thereafter, the plaintiffs' name was mutated in the revenue records pertaining to the suit property and thereby, he is in peaceful possession and enjoyment over the suit schedule property. The defendant being stranger to the plaintiff's family is trying to interfere with the peaceful possession and enjoyment of the plaintiff over the suit property. The plaintiff has no worldly knowledge and without the

assistance of this Court, the illegal act of the defendant cannot be restrained. Hence, this suit for the relief as referred earlier.

3. On summons being sent, the defendant entered his appearance through his counsel and filed his written statement. The gist of the written statement filed by the defendant is as follows:-

The defendant totally traversed the plaint averments contending *inter-alia* that, the plaintiff has agreed to sell the land in Sy.No.51/P of Mudigere village measuring 1 acre in favour of the defendant for sale consideration of ₹22,500/- and also handed over the possession of the said properties. Since the said date, the defendant is in possession and enjoyment over the said property. Further, the plaintiff has received entire sale consideration amount as on the date of agreement of sale itself. But, inspite of several demands, the plaintiff postponed to execute the registered sale deed on one or other pretext. The plaintiff has sold the suit property under an agreement of sale and hence has no manner of right, title and interest over the suit schedule property. Accordingly, he prayed to dismiss the suit with exemplary cost.

4. In the premise of the pleadings of the parties, this Court has framed the following:

ISSUES

- 1) Whether the plaintiff proves that, he is in peaceful possession and enjoyment of the suit schedule property as stated in the plaint?***
- 2) If so, whether the plaintiff further proves that, the alleged interference caused by the defendant as stated in the plaint?***
- 3) Whether the plaintiff is entitled for the relief as sought for?***
- 4) What order or decree?***

5. To establish his case, the GPA holder of the plaintiff by name Sri.Kumara.T got himself examined as PW.1 and produced 13 documents which are marked at Ex.P1 to P13. Per-contra, the defendant did not adduce any oral and documentary evidence.

6. I have given my anxious consideration to the arguments addressed at length by the counsel for the plaintiff and the defendant. Coupled with it, I have scrutinized the evidence accrued on record. Now, my findings on the above issues are as under for the reasons hereinafter assigned:-

Issue No.1 : In the Affirmative

Issue No.2 : In the Affirmative

Issue No.3 : In the Affirmative

Issue No.4 : As per the final order

for the following:

REASONS

7. **Issue No.1**:- The plaintiff projected a case that, after the demise of his father by name Thimmappa, he acquired the suit schedule property in the partition took place between himself and his brother and from the date of partition, he is in peaceful possession and enjoyment over the suit schedule property. Now let me delve with the evidence of PW.1 to testify whether the said case of the plaintiffs is established or not.

8. It is needless to say that, PW.1/GPA holder of the plaintiff has reiterated the plaint averments in the affidavit which he filed in lieu of his examination-in-chief. Further he produced 13 documents which are marked at Ex.P1 to 13. Ex.P1 is the pedigree of the family of the plaintiff. As it could be seen from the said document, the plaintiff is the son of one Thimmappa and PW.1 is the son of the plaintiff. Further, he produced the certified copy of the grant certificate at Ex.P2. As it could be seen from the said

grant certificate, the land in Sy.No.51/P of Mudigere village measuring 2 acres was granted in favour of one Thimmanna S/o Ranganna. The said Thimmanna S/o Ranganna is none other than the plaintiff's father herein. As per the tax paid receipt which is marked at Ex.P3, the plaintiff has paid tax pertaining to the property in Sy.No.166 of Mudigere village. Ex.P5 is the general power of attorney executed by the plaintiff in favour of PW.1 who is none other than his son. Ex.P4, 6 to 12 are the RTC extracts pertaining to the land bearing Sy.No.51/P. As it could be seen from the said RTC extracts, from the year 1973 to 1988, the property in Sy.No.51/P to an extent of 2 acres stands in the name of one Thimmanna S/o Ranganna. Further, from 1988-89 to 2017-18, the land in Sy.No.51/P12 measuring 2 acres stands in the name of the plaintiff. As per column No.10 of the said RTC extract, the plaintiff acquired the suit schedule property as per the order passed in MR.No.24/1988-89. Ex.P13 is the certified copy of the Mutation Register Extract bearing MR.No.24/1988-89. As it could be seen from the said document, the name of the plaintiff was mutated in the revenue records pertaining to the suit schedule property on the death of his father. The contents of the RTC extracts clearly reveals that, the plaintiff is in peaceful possession

and enjoyment over the suit schedule property as on the date of suit.

9. In the present suit, the defendant except filing his written statement not chosen to cross-examine PW.1 and he has not entered into the witness box in support of his contention taken in the written statement. Hence, it leads to draw adverse inference against the defendant U/Sec.114 of Indian Evidence Act. Further, whatever the oral and the documentary evidence adduced by the plaintiff remained unchallenged.

10. In a judgment reported in ***AIR 1999 Supreme Court 1441***, in between ***Vidhyadhar V/s. Mankikrao and another*** held as hereunder:-

(A) Evidence Act (1 of 1872), S.114-Adverse inference-Party to suit-Not entering the witness box-Give rise to inference adverse against him.

11. In the above case, the lordship has held that, the parties to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross-examined by other side, a presumption would arise that, the case set up by him is not correct. Hence in instant case, the defendant has not chosen to stepped into the witness box and offered herself to examine by

other side. Hence the Court has taken an adverse inference against him. Therefore whatever contention taken by the defendant is not reliable and trustworthy. More so, as adverted supra, the plaintiff successfully established his possession over the suit schedule properties as on the date of suit. Accordingly, I answer issue No.1 in the Affirmative.

12. Issue No.2:- It is the case of the plaintiff that, the defendant having no manner of right, title and interest over the suit schedule property are making an attempt to interfere with the peaceful possession of the plaintiff over the suit schedule property. PW.1 in his examination-in-chief has categorically deposed that, the defendant tried to interfere with his possession over the suit schedule property. The tone and tenure of the written statement of the defendant is itself sufficient to come to conclusion that, the defendant is trying to interfere with the possession of the plaintiff over the suit schedule property. So, looking into the oral evidence of PW.1 in the opinion of this Court, the plaintiff has satisfactorily established that, the defendant is trying to interfere with the possession of the plaintiff over the suit schedule property. This

being the case without much pondering around this issue, I answer this issue in the Affirmative.

13. Issue No.3:- The plaintiff has sought for permanent injunction to restrain the defendant from interfering with his peaceful possession and enjoyment over the suit schedule property. While answering on issue No.1 and 2 I have concluded that, the plaintiff is able to prove his possession and enjoyment over the suit schedule property as on the date of suit and also interference caused by the defendant with his possession over the suit schedule property as alleged in the plaint. This being the case, in order to protect the possession over the plaintiff over the suit schedule property it is just and equitable to grant relief of permanent injunction against the defendant as prayed for. Further, there is no impediment under the provisions of the Specific Relief Act to grant the relief claimed in the suit. Therefore, in my considered view, the relief claimed by the plaintiff for permanent injunction can be granted in favour of the plaintiff as prayed for. Accordingly, I answer this issue in the Affirmative.

14. **Issue No.4:-** In view of the foregoing reasons stated at issue No.1 to 3, the suit is deserves to be decreed with cost. Hence, I proceed to pass the following:-

ORDER

The suit is hereby decreed with cost.

The defendant is hereby restrained from interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule property by way of permanent injunction.

Draw decree accordingly.

(Dictated to the Stenographer, typed by him, corrected by me and then pronounced in the open Court on this the day of 25th February 2019.)

Sd/-
(PAVITHRA.M.D)
C/c. ADDL.CIVIL JUDGE AND
J.M.F.C, TARIKERE.

A N N E X U R E**List of witness examined for the plaintiff:-**

P.W-1 : Kumar.T

List of documents exhibited for the plaintiff:-

Ex.P-1 : Genealogical Tree
Ex.P-2 : Grant Certificate

Ex.P-3 : Tax Receipt
Ex.P-4 : R.T.C Extract
Ex.P-5 : General Power of Attorney
Ex.P-6-12 : R.T.C Extracts
Ex.P-13 : Record of Rights

List of witnesses examined for the defendant:-

- Nil -

List of documents exhibited for the defendant:-

- Nil -

Sd/-

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