

IN THE COURT OF THE SENIOR CIVIL JUDGE, AT CHANNAGIRI

**Present:- Sri. G.V. Chandrashekhar
Senior Civil Judge & JMFC,
Channagiri.**

Dated this the 28th day of April, 2018

O.S. No.62/2016

Sri. Girish. T.S.

..... Plaintiff

S/o Late T.S. Janardhan,
Aged about 45 years,
R/o No.150/1, Shiva Building,
12th Cross, K.T.J. Nagar,
Davanagere.

(By Sri.D.T.N., Advocate)

Vs.

Sri. T.H.Shivamurthayappa,
S/o Thurapurtti Halappa,
Aged about 60 years,
R/o Proprietor of Wine shop,
Thyavanige Village,
Channagiri Taluk.

.. Defendant

(By Sri. Y.M.R., Adv.,)

Date of institution of suit:	18.10.2016
Nature of suit	:Declaration and possession
Date of commencement of evidence :	14.09.2017
Date of Judgment	: 26.04.2018
Total duration	: Year/s Month/s Day/s
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**(G.V. Chandrashekhar)
Senior Civil Judge & J.M.F.C.,
Channagiri**

J U D G M E N T

This is a suit filed by the Plaintiff seeking for the relief of declaration to the effect that declared that he is the absolute owner of the suit schedule properties and also further direct the defendants to handover the possession of the suit schedule property, decree for future mesne profits and also to restrain the defendants from interfering with the suit schedule property and any other suitable orders has been effect.

2. The plaintiff contends that the plaintiff is the son of one late Janarana who had brothers by name Murigeppa, Malleshappa, Rohitaksha and Nageshappa along with the plaintiff father Janarana. That the plaintiff grand father was one Channappa Sahukar and that the suit schedule property was an agricultural land measuring 5 acres, 38 guntas in Sy.No.153/7 and that the said property came to the portion of Rohitaksha when partition took place among these brothers. That the said Rohitaksha was unmarried and was living with the younger brother Janarana i.e., plaintiff's father till his death on 06.05.2005. The plaintiff submits that the above mentioned brothers of Rohitaksha predeceased him, except the plaintiff father Janardhana. That the said Rohitaksha was living with the plaintiff father Janardhan. That Rohitaksha died intestate and unmarried and therefore his father succeeded to his brother's property. Hence the plaintiff submits that the suit schedule property has devolved upon his father Janarana because he was only surviving brother at the of his death.

3. The plaintiff submits that his father as well as Rohitaksha has being possession of the suit schedule property and they had been resisting the interference of the defendants till the time of his death on 06.09.2010. The defendant is no way connected and he is stranger to the family of plaintiff and he having no manner of right, title or interest over the suit schedule property, he was making hectic effort to dispossess the plaintiff's father. But the same was resisted until his death in the year 2010 and after death of his father the defendant continued their illegal interference over the suit schedule properties, the defendant using his political and money power got possession of the suit schedule property by dispossessing him and in the year 2016 by sowing paddy

on the suit land. When the plaintiff questioned the defendants they showed the revenue records in respect to the suit schedule property wherein the name of the defendant has been entered. That the defendants have colluded with the revenue authorities got the katha in his name without calling an objection from plaintiff. The plaintiff submits that he tried to lodged a complaint before the police, but the same was not successful and that the plaintiff submits that he has got reliable information that the defendant is trying alienate the suit schedule property by illegal means and hence submits that he was constrained to file this suit.

4. To this defendant has filed objection statement contending interalia among other things that the relationship between the plaintiff and Janarana and Rohitaksha. He denies that the plaintiff and Janarana Rohitaksha were living under one roof. That the Rohitaksha died unmarried is admitted by the defendant in the year 2005. The defendant it is specific contention to the effect that he was cultivating the said suit schedule property on Gutthige basis for on behalf of Rohitaksha since in the year 1992 and that the said late Rohitaksha had expressed his intention to sell the said land to the defendant and that one mediator Dr.Nagaraj brother in law of the said Rohitaksha was present and that time it was agreed to sell the suit schedule property the said land for Rs.16,000/- per acre and in all Rs.1,08,000/- out of said sale consideration amount of Rs.1,05,000/- were paid by the defendant in the presence of Dr.Nagaraj and balance of Rs.3,000/- to be paid at the time of sale deed and registration and defendants submits that sale agreement was entered on 02.07.2001 wherein it was mentioned that Rs.1,05,000/- were way back in the year 1992 and that the possession was also handed over to the defendant. The defendant submits that at that time the said suit schedule property was a "Sarkari pada" and therefore it was also mentioned in the sale agreement that the defendant he get the katha and pahani as per the agreement and therefore the defendant given Rs.3,000/- to the Government for restoration of the land was made in the name of Rohitaksha.

5. The defendant submits that Rohitaksha had filed in O.S.No.307/2001 against the defendant and other 6 defendants and that the suit was dismissed in the year 2003. The defendant also submits that the plaintiff and his brother Channamalleshwara had instituted a suit to declare that the compromise judgment and decree in O.S.No.410/2006, dated: 06.09.2010 be declared as void ab initio illegal and not binding on the plaintiff and that before this court the suit got dismissed by the plaintiff and his brothers in the year 2013. That further another suit in O.S.No.410/2006 was filed by T.S.Jayadevappa the elder brother of the plaintiff against the defendant and that suit was compromise petition was entered into as per the sale agreement and that the said matter was compromised to an extent of 5.38 acres was declared to be that all belonging to the defendant and defendant was declared of the suit owner and in possession of the suit schedule property. Based on the above said compromise petition the katha and pahani was changed in the name of the defendant as per M.R.No.13/2011-12 and since he has become the absolute owner and in possession of the suit schedule property and therefore submits that the plaintiff or his other family members has no manner whatsoever over the suit schedule property and therefore prays for dismissing the suit.

6. Based on the above pleadings, the following issues have been framed by my learned predecessors in office:

ISSUES

1. ***Whether the plaintiff proves that he is the absolute owner of the suit schedule property?***
2. ***Whether the plaintiff proves that he is entitled for the possession of the suit schedule property?***
3. ***Whether the plaintiff proves that he is entitled for mesne profits?***

- 4. Whether the defendants prove that late T.S. Rohitaksha S/o Channappa had executed the sale agreement on 02.07.2001 agreeing to sell the suit schedule property for valuable sale consideration of Rs.16,000/- per acre and possession was delivered to the defendant during 1992 as per the oral agreement by receiving part of sale consideration?**
- 5. Whether the plaintiff proves that he is entitled for the reliefs claimed in this suit?**
- 6. To what order or decree?**

7. On behalf of the plaintiff Girish T.S. has got examined himself as P.W.1 and got marked 4 documents. The defendants has examined T.H. Shivamurthappa as Dw1 and got marked 8 documents.

8. Heard the arguments and perused the documents.

9. My findings on the above issues are as under:

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 Do not survive for

Consideration;

Issue No6 As per the final order

REASONS

10. Issue No.1 to 4 :- Since these issues are interlinked with each other, they are discussed together.

11. It is to be noted that the plaintiff has filed a suit to declaration that he being declared as the absolute owner of the suit schedule property.

But It is to be noted that that the suit schedule property originally belong to Rohitaksha, the uncle of the plaintiff who admittedly died on 06.05.2005 vide Ex.P4. The plaintiff has contended that all the brothers of Rohitaksha, except his father predeceased him. That his father died on 06.09.2010. D.W.1 had admitted that except the plaintiff's father T.S.Janardhana all the brothers including Rohitaksha, predeceased him.

12. It is to be noted that plaintiff has asked for the relief of declaration that he be declared as the absolute owner of the suit schedule property, but It is to be noted that the plaintiff is not the only legal heir of his father and that he has a brother by name Channallesha, who has not been included in this suit. It is to be noted that the suit came to be dismissed as not pressed and as settled out of the court and the relief claimed was declare the compromise entered in 08:4/0/2006 be declared as invalid. But for the reasons best known to that plaintiff he got the same dismissed as settled out of court.

13. That the plaintiff is claiming that he be declared as an absolute owner, but It is to be noted that as per the say of the plaintiff himself the suit schedule property devolved upon his father after the death of Rohitaksha, but the plaintiff has not made his brother as a party to the suit, to which his brother has equal rights to that of the plaintiff. Also the earlier suit which it plaintiff and his brother got settled out of court was with respect to the same suit schedule property. Also It is to be noted that the plaintiff has not mentioned the facts in this and filed the suit for declaration as an absolute owner, which cannot be granted in light of he having another legal heir and they are not the sole owner.

14. The defendant has put up a defence that he became the owner of the suit schedule property under an oral agreement sale wayback in the year 1992, in the presence of Dr. Nagaraj and other witnesses and later on in the year 2001 had got executed the sale agreement for Rs.1,05,000/-.

15. But on perusal of the documents no such document has been produced by the defendant to that effect and he has also not examined any witnesses to substantiate the same. In the cross-examination of D.W.1 has admitted that

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Even in his cross-examination D.W.1 has clearly admitted that he is in possession of the said document, but for reasons best known to him he has not produced the same. In view of the above, the non production of the same an adverse inference has to be drawn about the existence of such documents and therefore I have to answer the above points in the negative.

16. Issue No.5:- In view of discussions and the reasons mentioned in that issue and the findings made in that issue this issue will not survive for consideration.

17. Issue No.6 : - As per the final order, I proceed to pass the following;

ORDER

The suit of the Plaintiff is hereby dismissed, under the circumstances of the case, the parties to bear their own cost.

(Dictated to the stenographer, transcribed by her. The transcript revised by me, and then pronounced in the open court on this the 28th day of April, 2018.)

**(G.V. Chandrashekhar)
Senior Civil Judge & J.M.F.C.,
Channagiri.**

ANNEXURES**Witnesses examined for the Plaintiff:**

PW1 : Girish T.S.

Documents exhibited by the Plaintiffs:

Ex.P 1 to 3 : RTCs
Ex.P 4 : Death certificate

Witnesses examined for the Defendants:

DW.1 : T.H.Shivamurthappa

Documents exhibited by the Defendants:

Ex.D1 : Certified copy of the plaint
Ex.D2 : Memo
Ex.D2(a) : Signature of T.G.Girish
Ex.D2(b) : Signature of Channamalleswar
Ex.D3 : Copy of Order in O.S.NO.48/2011
Ex.D3(a) : Signature of T.G.Girish
Ex.D3(b) : Signature of Channamaleswar
Ex.D4 : Copy of mutation
Ex.D5 : Compromise application in O.S.No.410/06
Ex.D6 : Mutation in M.R.No.T86-14-15
Ex.D7 : Encumbrance certificate

Ex.P8 : RTC

**Senior Civil Judge & J.M.F.C.,
Channagiri.**