

Form No.9 (Civil) Title sheet for Judgment in Suits (K.P.91)	<u>IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND JMFC.,HONNALI.</u>
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PRESENT : Smt. Usha Rani R. B.A.L., LL.M.,
Principal Civil Judge & JMFC.,
Honnali .

ORIGINAL SUIT No 181 / 2014
Dated this the 2nd day of December 2014

PLAINTIFF: Sri. Ningarajappa S/o Nelappa. Aged
about 58 years, Agriculturist, R/o:
Odeyara Hattur Village, Honnali
taluk, Davanagere District.
Represented by his GPA Holder,
Shashi kumar S/o Ningarajappa,
Agriculturist, Aged about 28 years,
R/o: Odeyara Hattur Village, Honnali
taluk, Davanagere District.

(By Sri. Sanjeevappa H., Advocate)

V/s

DEFENDANTS: 1. Sri. Basavarajappa S/o Siddalingappa
Maligera, Agriculturist, Aged about
60 years.
2. Sri. Rudresh S/o Basavarajappa,
Agriculturist, Aged about 25 years,
Both are R/0: Odeyara Hattur
Village, Honnali taluk, Davanagere
District.

(By Sri. M.K. Haladappa. Advocate)

Date of institution of the suit : 17-06-2014

Nature of the suit : Permanent injunction

Date of the commencement of recording of the evidence : 15-11-2014

Date on which the judgment was pronounced : 02-12-2014

Total duration : Years Months Days
00 05 16

(Smt.Usha Rani R.)
Principal Civil Judge & JMFC.,
Honnali.

J U D G M E N T

The instant suit is filed for permanent injunction.

2. The facts of the plaint in nutshell are that:

The plaintiff avers that, agricultural land bearing Sy. 67/4P1 totally measuring an extent of 1 acre and 38 guntas including 6 guntas of Karab land is jointly owned by Ramappa son of Haladappa, Shatamma W/o Neelappa, Veerappa, Rudrappa, and Radhamma, and 10 guntas of land is acquired by Upper Tunga project. Out of this land, 1 acre of land was owned and enjoyed by Smt. Shanthamma

W/o Neelappa in her life time. Shanthamma is the mother of the plaintiff. The plaintiff is only son of Shantamma W/o Neelappa. After the death of Smt. Shanthamma W/o Neelappa , the plaintiff is in possession and enjoyment of the property shown in the schedule of the plaint. But the records of the land in RTC's is continued in the name of plaintiffs mother Smt. Shanthamma W/o Neelappa .

3. Plaintiff avers that the defendants having no manner of right, title or interest over the suit schedule property and at no point of time the defendants were in possession and enjoyment of the suit schedule property. But they are causing interference in plaintiffs possession and enjoyment over the suit schedule property. On 21-03-2014, when the plaintiff was cleaning the suit schedule property, the defendants come together with their supporters and illegally entered the suit property started quarrel with this plaintiff and tried to dispossess the plaintiff from the property. They were resisted. But there is further apprehension of interference. Hence this suit.

4. After registration of the suit, summons was served on the defendants. Defendants appeared through their counsels but failed to file written statement inspite of sufficient opportunity.

5. Heard the arguments of learned counsel for the plaintiff and defendants and also perused the oral and documentary evidence produced in this suit.

6. The following points arise for my consideration.

- 1) *Whether plaintiff proves actual possession and enjoyment over the suit property as on date of the suit?*
- 2) *Whether the plaintiff further proves alleged interference by the defendant?*
- 3) *What order or decree?*

7. To prove his case the plaintiff has filed his affidavit of evidence, examined himself as PW-1 and got marked the documents as Ex.P-1 to 3.

8. My findings on the above said points are as follows:

Point No.1:- In the Affirmative.

Point No.2:- In the Affirmative.

Point No.3:- As per the final order for the following:

REASONS

9. **Point Nos.1 and 2**:- These two points are taken together for the purpose of common discussion in order to

avoid repetition of facts and evidence. The plaintiff Sri. Shashi kumar has examined himself as PW.1 and reiterated the plaint averments in toto. He has got marked general power of attorney as Ex.P.1. He has got marked the RTC extract of suit property in Sy.No. 67/4P1 which shows the names of Sri. Ramappa, Smt. Shanthamma, Sri. Veerappa and Sri. Rudrappa to an extent of 1 acre 9 guntas. The property shown as Sy.No. 67/4P1 measuring 1 acre. Ex.P.3 is the death certificate of deceased of Smt. Shanthamma which shows the death of date as 18-06-2000.

10. Though defendants appeared, they have not filed written statement or contested the case. There is no rebuttal evidence. The name of the defendants are not seen in the revenue records and as such they have no right to interfere with the right of the plaintiff over the suit property. It is not disputed that the plaintiff is the son of Shantamma. There is no rebuttal evidence.

11. On careful perusal of these documents, it is clearly forthcoming that the plaintiff is in actual possession of the suit property. There is no rebuttal evidence as defendants did not file written statement nor chose to cross examine PW 1..

12. In 2001-AIR(SC)-0-3207 , 2001-SCC-7-69 Rajinder Prasad Vs Darshana Devi

Held: In the absence of cross-examination on crucial aspects the statement in the chief-examination has to be relied upon.

In the present case also the crucial aspects of the chief examination have not been denied by cross-examining the PW1/ plaintiff. Therefore in view of the decision of the Hon'ble Supreme court supra an adverse inference has to be drawn against the defendants.

13. This apart the present defendants have not lead any evidence in support of their defence nor got marked any documents any documents. In this regard it is beneficial to refer a decision of Hon'ble Supreme Court in AIR, 1999 Supreme Court 1441 in between **Vidhyadhar v/s Manikrao and another** wherein Hon'ble Supreme Court held in para No.16 of the order reads as under.

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

(16.) Where a party 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 the other side, a presumption would arise that the case set up by him is not correct

14. Under the light of these facts and circumstances of the case, there is no contradicting version to disprove the claim of the plaintiff. Regarding interference there is nothing to disbelieve the oral testimony of the plaintiff. Thus I hold that the plaintiff has convincingly established point no 1 and 2.

15. Point no.3:- In the result and for the foregoing reasons I proceed to pass the following;

ORDER

The suit of the plaintiff is decreed with costs.

Defendants or anybody claiming under them are hereby restrained by way of permanent injunction from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

Draw decree accordingly.

(Directly computerized by me corrected, signed and pronounced by me in the Open court on this the 2nd day of December 2014.)

(Smt.Usha Rani R.)
Principal Civil Judge & JMFC.,
Honnali.

A N N E X U R E S

1. LIST OF WITNESSES EXAMINED FOR THE PLAINTIFFS

PW.1 : Sri. Shashikumar.

2. LIST OF DOCUMENTS MARKED FOR THE PLAINTIFFS

Ex.P.1 : General Power of Attorney
Ex.P.2 : RTC Extract.
Ex.P.3 : Death Certificate.

3. LIST OF WITNESSES EXAMINED AND DOCUMENTS MARKED ON BEHALF OF DEFENDANTS:

-----NIL-----

(Smt.Usha Rani R.)
Principal Civil Judge & JMFC.,
Honnali.

