

Form No.9 (Civil) Title sheet for Judgment in Suits (K.P.91)	IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND <u>JMFC.,HONNALI.</u>
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PRESENT : Sri. Deepak Patil. B.Sc., LL.B.,
Addl. Civil Judge & JMFC.,
Honnali.

ORIGINAL SUIT No. 196/2015

Dated this the 25th day of January 2017.

PLAINTIFF:	Sri. Thippanna T. S/o Hanumanthappa, Aged about 68 years, Agriculturist, R/o Kundur Village, Honnali taluk, Davanagere District. (Rep. By Sri. B. Umesh., Advocate)
	<u>V/s</u>
DEFENDANTS:	Smt. Basamma W/o Hanumanthappa, aged about 65 years, R/o: Kundur village, Honnali taluk, Davanagere District. (Exparte)

Date of institution of the suit: 05-08-2015

Nature of the suit : Declaration and consequential
relief of
Permanent Injunction.

Date of the commencement of
recording of the evidence : 11-02-2016

Date on which the judgment
was pronounced : 25-01-2017

	Years	Months	Days
Total duration:	01	05	20

(Deepak Patil)
Addl. Civil Judge & JMFC.,
Honnali

J U D G M E N T

The plaintiff has filed the suit for the relief of declaration that he is owner in possession of suit schedule property and for consequential relief of permanent injunction restraining the defendant or anybody acting on her behalf from interfering in his alleged possession and enjoyment of the suit schedule property.

2. It is averred by plaintiff that the suit schedule property originally belongs to plaintiff and the same was granted to him by then Grama Panchayath vide order in HUD 91/SWS/88 dated 18-04-1978. The then Mandal panchayat issued the Hakkupatra in his favour and delivered the possession of suit schedule property to him. Accordingly his name was entered to concerned records of suit schedule property but the plaintiff has lost the original Hakkupatra. The plaintiff is using the suit schedule property for storing the manure, cow dung and agricultural implements as owner in possession. The defendant has no manner of right, title, interest or possession over suit schedule property. In September 2014, with an intention to

construct the house over suit schedule property under Government Scheme, plaintiff applied for documents of suit schedule property to Gram panchayat, Kundur and he came to know that the khata of suit schedule property is entered in the name of defendant without any basis behind his back. Therefore he applied to remove the said entry and enter his name to the records of suit schedule property but the Gram Panchayat did not comply the same. He also applied to Taluk panchayath Honnali to get the copy of Hakku patra granted in his favour but the Taluk Panchayath Honnali issued the endorsement that the same is not available. On 28-07-2015 when the plaintiff was cleaning the suit schedule property the defendant tried to interfere in his possession and enjoyment of suit schedule property. The plaintiff resisted the said act of defendant and made her to return. While returning the defendant threatened him to dispossess from suit schedule property by denying his title over suit schedule property. The defendant being powerful and influential, he is not in a position to resist the act of the defendant without the help of this court and hence prayed to decree the suit.

3. In spite of service of suit summons the defendant did not appear in the case and hence she is placed Exparte.

4. Based on the averments of plaint, the following points arise for consideration

- 1) *Whether the plaintiff proves that, he is owner in possession of the suit schedule property?*
- 2) *Whether the plaintiff proves that, the defendant interfered in his peaceful possession and enjoyment of the suit schedule property?*
- 3) *Whether the plaintiff is entitled for the relief of declaration and permanent injunction as claimed in plaint?*
- 4) *What order or decree?*

5. To prove his case the plaintiff examined himself as PW.1 another witness as Pw.2 and got marked 10 documents on his behalf as Ex.P.1 to 10.

6. Heard arguments of advocate for plaintiff and perused materials on Record.

7. Answer to above said points is:

Point No.1:- Partly in Affirmative.

Point No.2:- In the Affirmative.

Point No.3:- Partly in Affirmative.

Point No.4:- As per final order for the following:

REASONS

8. Point No.1:- It is the case of the plaintiff that he is owner in possession of suit schedule property. To prove the same plaintiff examined himself as pw.1 and stated in his evidence that the suit schedule property originally belongs to him and the same was granted to him by then Grama Panchayath vide order in HUD 91/SWS/88 dated 18-04-1978. The then Mandal panchayat issued the Hakkupatra in his favour and delivered the possession of suit schedule property to him. He has lost the original Hakkupatra. He is using the suit schedule property for storing the manure, cow dung and agricultural implements as owner in possession.

9. The witness by name Jayappa examined as pw.2 stated in his evidence that the suit schedule property originally belonged to Government and then Grama Panchayath granted the same to plaintiff, issued the Hakkupatra and delivered the possession of same to plaintiff.

10. As the defendant has remained exparte, the oral evidence of pw.1 and 2 remained unchallenged.

11. In support of his case the plaintiff produced the certified copy of House/Land tax assessment list of suit property for the year 1989-90 marked as Ex.P.1 and 10,

certified copy of DCB register extract of suit property for the year 2015-16 entered in the name of defendant marked as Ex.P.2 and 3, endorsement of application to Grama Panchayat, Kundur dated 26-09-2014 marked as Ex.P.4, endorsement issued by Grama Panchayat, Kundur dated 28-10-2014 marked as Ex.P.5, endorsement issued by Taluk Panchayat, Honnali dated 29-06-2015 marked as Ex.P.6, endorsement issued by Grama panchayath, Kundur dated 09-07-2015 marked as Ex.P.7, genealogy certificate issued by Revenue Department marked as Ex.P.8, original patta book marked as Ex.P.9.

12. From the documents marked as Ex.P.1 to Ex.P.10 it is seen that the name of the plaintiff was entered in the tax assessment extract of the suit property for the year 1989-90 as per Ex.P.1 and 10, however the name of defendant is shown to have entered in the place of plaintiff's name on the basis of statement of plaintiff. Now the name of defendant is entered in the DCB register of suit schedule property as per Ex.P.2 and 3. In Ex.P.1 and Ex.P.10 the plaintiff was shown to be person in enjoyment of suit property whereas presently in Ex.P.2 defendant is shown to be in enjoyment of suit schedule property. In the patta book of the suit schedule property issued by the Grama panchayath, Kundur dated 28-03-1988 the plaintiff is shown to be its khatedar.

13. The plaintiff has given application to Grama Panchayath, Kundur as per Ex.P.4 stating that the name of defendant is entered in the Grama panchayath records of suit schedule property by forging the same. In the said application it is also stated that neither plaintiff nor his family members have transferred the suit schedule property to defendant in any manner. The Grama panchayat, Kundkur has issued endorsement to plaintiff as per Ex.P.5 stating that in the general meeting dated 21-10-2014 the application submitted by plaintiff was discussed and it was decided to give him a endorsement that the defendant's name was entered on the basis of plaintiff's statement. The Taluk panchayath, Honnali has issued endorsement as per Ex.P.6 to the effect that the file with respect to Government order HUD.91/SWS/77 dated 18-04-1978 is not available. Further the Grama panchayath, Kundur has issued an endorsement as per Ex.P.7 stating that there is no information available in the Grama Panchayath about the date and time on which the defendant's name is entered in the Grama panchayath records of suit schedule property.

14. Therefore by considering the documents produced by the plaintiff it is clear that in the year 1989-90 the plaintiff's name was entered to the suit schedule property as person in enjoyment of the same. However the defendant's name was entered to concerned Grama panchayath, records of

suit schedule property without there being any document of transfer or title executed by the plaintiff in the name of defendant. The defendant's name is shown to have entered only on the basis of statement given by plaintiff. There are no any records available in the Grama Panchayath about the date and time on which the defendant's name is entered to the suit schedule property. There is no any basis for entry of defendant's name to the suit schedule property. The Grama panchayath has also not taken any steps to restore the name of the plaintiff to suit schedule property inspite of application made by the plaintiff. Therefore as the suit schedule property is open space the possession of the same cannot be transferred by plaintiff to defendant without there being any legal valid document. As the name of the defendant is entered to suit schedule property without any legal basis, defendant cannot be said to be in possession of the same only on the basis of present Grama panchayath records which have no probative value in the absence of any legal document. Hence the possession of the suit schedule property is not at all transferred by plaintiff to defendant and as such he continues to be in possession of the same.

15. It is also pertinent to note that the plaintiff has not produced any Hakkupatra of the suit schedule property as alleged by him. As per the endorsement issued by the Taluk panchayath the file pertaining to issuance of Hakkupatra is

not available. However only on the basis of Taluk panchayath endorsement and oral evidence of pw.1 and 2 it cannot be considered that the plaintiff has proved his alleged ownership over the suit schedule property.

16. Therefore by considering the evidence in its entirety, from the oral evidence of plaintiff, and the documentary evidence produced by the plaintiff, the plaintiff has failed to prove that he is owner of the suit schedule property. However he has proved that he is in possession of the suit schedule property. Hence for all these reasons answer to issue No.1 is partly in Affirmative.

17. Issue No. 2: The plaintiff has proved his possession over the suit schedule property. The plaintiff stated in his evidence that on 28-07-2015 when he was cleaning the suit schedule property the defendant tried to interfere in his possession and enjoyment of suit schedule property. The plaintiff resisted the said act of defendant and made her to return. While returning the defendant threatened him to dispossess from suit schedule property by denying his title over suit schedule property. The plaintiff has stated on oath regarding the interference caused by the defendant. Even though the defendant was served with summons of this court she has not chosen to appear before the court and contest the suit, as such the evidence of plaintiff has remained unchallenged. Further mere apprehension in the

mind of the plaintiff regarding violation of his right to enjoy the property is also sufficient for grant of injunction. Therefore the plaintiff has proved the interference by the defendant in his possession over suit schedule property. Hence for all these reasons answer to issue No.2 is in Affirmative.

18. Issue No. 3: The plaintiff has failed to prove his ownership. But he has proved his possession over suit schedule property and the interference made by the defendant in his possession. If the defendant is not restrained from interfering in the plaintiff's possession over suit schedule property, the plaintiff will be put to untold hardship and loss and the plaintiff's right to enjoy his property in peaceful manner will be infringed. Further no circumstances are seen to disentitle the plaintiff from getting the equitable relief of injunction from the hands of this court. Therefore the plaintiff is not entitled for the relief of declaration of his ownership but he is entitled for the relief of perpetual injunction against the defendant to protect his possession. Hence for all these reasons answer to issue No. 3 is partly in Affirmative.

19. Issue No 4: In view of the reasons assigned above the following.

ORDER

The suit is partly decreed with cost.

The suit for the relief of declaration that the plaintiff is owner of suit schedule property is dismissed.

The suit for the relief of permanent injunction against defendant is hereby decreed.

The defendant or anybody acting on her behalf are restrained from interfering with plaintiff's possession and enjoyment of the suit schedule property in any manner.

Draw decree accordingly.

(Dictated to the stenographer directly on computer, typed by her, corrected, signed and then pronounced by me in the Open court on this the 25th day of January 2017.)

(Deepak Patil)
Addl. Civil Judge & JMFC.,
Honnali .

A N N E X U R E S

1. LIST OF WITNESSES EXAMINED FOR THE PLAINTIFF

PW.1 : Thippanna
PW.2 : Jayappa.

2. LIST OF DOCUMENTS MARKED FOR THE PLAINTIFF

Ex.P.1 and 10	:	Certified copy of House/Land tax assessment list.
Ex.P.2 & 3	:	certified copy of DCB register extract
Ex.P.4		Endorsement of application
Ex.P.5	:	Endorsement issued by Grama panchayath
Ex.P.6		Endorsement issued by Taluk panchayath
Ex.P.7	:	Endorsement issued by Grama panchayath,
Ex.P.8	:	Genealogy Certificate
Ex.P.9	:	Original Patta Book

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

-----NIL-----

(Deepak Patil)
Addl. Civil Judge & JMFC.,
Honnali.