

**IN THE COURT OF THE Pri. CIVIL JUDGE AND JMFC
AT HOLENARASIPURA**

Present: Arun Chougule.,B.A.,LL.,B.(Hons.)
I/c. Civil Judge And JMFC,
Holenarasipura

Dated this the 29th day of September 2020

ORIGINAL SUIT NO.17/2016

PLAINTIFF :- Krishnegowda S/o Nanjegowda,
aged about 50 years,
R/o Bandishettyhalli village,
Kasaba Hobli,
Holenarasipura taluk,
Hassan district.

(By Sri. S.B.S., Advocate)

-V/S-

DEFENDANT :- 1. Eregowda S/o Bommegowda,
Aged about 70 years,
2. Nanjamma W/o Eregowda,
aged about 60 years,
Both are R/o Bandishettihall village,
Kasaba Hobli,
Holenarasipura taluk.

(By Sri. J.N., Advocate)

Date of Institution of suit	:	21.01.2016		
Nature of suit	:	Permanent Injunction		
Date of commencement of recording of evidence	:	04.02.2019		
Date of pronouncement of judgment	:	29.09.2020		
Total Duration	:	Year/s	Month/s	Day/s
		04	08	08

J U D G M E N T

The plaintiff has filed this suit for the relief of permanent injunction seeking to restrain the defendants from interfering with his possession over the suit property.

SUIT SCHEDULE

Land bearing Sy.No.173/4 measuring 2 guntas situated at Bandishettihalli village, Kasaba Hobli, Holenarasipura taluk within the following boundaries.

East-Land belonging to Kengegowda
S/o Kugegowda

West- Land belonging to Defendant
Eregowda and Nanjunda

North-Land belonging to Ramegowda
S/o Annegowda

South- Road

2. The brief facts of the plaintiff's case are as under:-

It is stated that the suit land was originally ancestral property of the plaintiffs' family and he having inherited the same is in its possession and the enjoyment. It is stated that, name of the plaintiff is mutated to the records of the suit land as per order passed in MR No.5/1998-99. This being the fact, the defendants without having any manner of right, title or interest over the suit property are trying to put up fencing in the suit land. However, the plaintiff restrained the said highhanded act of the defendants with the help of his family members. It is stated that, since there are chances of the defendants

repeating their illegal acts and interfering with plaintiff's possession over the suit property, he was constrained to file the present suit.

3. On service of summons, the defendants appeared through their counsel and filed written statement denying plaintiffs' case. The defendants contend that, the suit 02 guntas of land is their ancestral property wherein defendant No.1 has got 1/2 gunta, his elder brother's son namely Basavegowda S/o Late Appajigowds has got 1/3 gunta and his another brother's son namely Kengegowda S/o Kugegowda is having 1/3 gunta. It is stated that, their names are mutated as per order passed in ICR No.7/1980-81. Accordingly, the defendant No.1 and sons of his brothers are in possession of their respective portions in the suit 02 guntas of land and they have put up haystack in their properties.

4. It is further contended that, the plaintiff has got created an imaginary cause of action and has filed the present false suit by furnishing false boundaries. It is contended that, the plaintiff made an attempt to remove the fencing put up around the property in possession of defendants. On these grounds, the defendants sought to dismiss the suit.

5. On the basis of above pleadings, following issues are framed:

ISSUES

- 1) Whether the plaintiff proves that, he is in lawful possession and enjoyment of the suit schedule property as alleged in the plaint?*

- 2) *Whether the plaintiff proves the alleged interference by the defendants?*
- 3) *Whether the plaintiff proves that he is entitled for the relief as sought for?*
- 4) *What order or decree?*

6. The plaintiff, in order to prove his case, got himself examined as P.W.1 and got examined two other witnesses on his behalf as PW.2 and PW.3, and got marked 10 documents as Ex.P.1 to 10. On the other hand, the defendants got examined the defendant No.1 as D.W.1 and two other witnesses on their behalf as Dw.2 and 3, and got marked 8 documents as Ex.D1 to 8.

7. Heard the arguments of learned counsel for plaintiff. Learned counsel for the defendants has filed written arguments.

8. Having regard to the material placed on record and arguments heard, my answers to the above issues are:

Issue No.1- In the Affirmative.

Issue No.2- In the Affirmative

Issue No.3 -In the Affirmative

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

-:: R E A S O N S ::-

9. Issue No.1:-

The plaintiff has filed the present suit seeking the relief of permanent injunction restraining the defendants from interfering with

his possession over the suit property bearing Sy.No.173/4 measuring 2 guntas situated at Bandishettyhalli village, Kasaba Hobli of Holenarasipura taluk.

10. As the pleadings would reveal, the plaintiff claims that the suit land was originally ancestral property of his family and he having inherited the same is in possession and enjoyment, and his name is also mutated in the records of the suit property. The defendants, on the other hand, claim that the suit 02 guntas of land was originally their ancestral property and the defendant No.1 and his brothers' sons namely Kengegowda and Basavegowda having got divided the said 02 guntas in 3 shares are in possession and enjoyment of the same.

11. As far as relevant documentary evidence produced by both the parties are concerned, RTC, certified copy of mutation register and hand written RTC pertaining to suit land Sy.No.173/4 produced by the plaintiff are marked as Ex.P1 to 3. The defendants have also produced certain hand written RTCs, certified copy of ICR No.7/1980-81 and pakka book, which are marked Ex.D1 to 4.

12. Ex.P3 hand written RTC pertaining to suit Sy.No.173/4 shows that, the suit 02 guntas of land was originally standing in the name of one Bommegowda S/o Basavegowda. At this stage, it is relevant to mention that, the DW.3 in his cross examination admits that, name of plaintiff's great grand father was Bommegowda S/o Basavegowda. Ex.P3 RTC further shows that, after the death of said

Bommegowda, name of the plaintiff's mother Akkayamma was entered to the records of suit land. It is relevant also to note that, there is no dispute that the plaintiff is the son of said Akkayamma and the said fact is also admitted by DW.2 Yogesh in his cross examination. Ex.P3 hand written RTC, which is pertaining to the year 1996-97 to 2001-02 further reflects that after the death of plaintiff's mother Akkayamma, name of the plaintiff came to be entered in the RTC as per order passed in MR No.5/1998-99.

13. Certified copy of said mutation register produced by the plaintiff is marked as Ex.P2, which shows that, in a partition between the plaintiff Krishnegowda S/o Nanjegowda and his brothers, the suit land was fallen to share of the plaintiff. Accordingly, his name was ordered to be entered to the records of suit land. Ex.P1 computerized RTC pertaining to the suit land shows that, name of the plaintiff is entered to the records as per the above referred mutation order.

14. The above revenue records produced by the plaintiff clearly show that, the suit land originally belonged to Bommegowda S/o Basavegowda and after his death the same was inherited by plaintiff's mother Akkayamma. Thereafter, in a partition between the plaintiff and his brothers, the suit property came to be fallen to the share of the plaintiff and accordingly, his name is entered in the revenue records.

15. Insofar as the documents produced by the defendants are concerned, Ex.D1 and 2 hand written RTCs shows that, suit land was standing in the name of Bommegowda S/o Basavegowda in the year 1981-82 to 1990-91. Ex.D5 records of rights would also show that, suit land Sy.No.173/4 belonged to said Bommegowda S/o Basavegowda. Ex.D3 certified copy of ICR No.7/1980-81 would show that, an order was passed for entering the names of defendant No.1 Eregowda, his brother Appajigowda and Kengegowda to the records of suit land Sy.No.173/4. Ex.D4 patta book would also show that, ½ guntas of land in suit Sy.No.173/4 belongs to the defendant No.1 Eregowda. However, it is relevant to note that, no RTC is produced by the defendants to show that, name of the defendant No.1 and his brothers were entered in the RTC pertaining to the suit land as per order passed in ICR 7/1980-81.

16. Insofar as oral evidence of the parties is concerned, the defendant No.1/DW.1 in his cross examination deposed that the plaintiff is in possession of 02 guntas of land belonging to him. The relevant portion of cross-examination of DW.1 is extracted below:

ವಾದಿಗೆ ಇರುವ ಆಸ್ತಿ ವಾದಿಯ ಹೆಸರಿನಲ್ಲಿ ಪಹಣಿ ಇದೆ ಎಂದರೆ ಸಾಕ್ಷಿ ಅವರಿಗೆ ಇರುವ ಆಸ್ತಿ 02 ಗುಂಟೆ ಅವರಿಗೆ ಇದೆ, ನನಗೆ ಇರುವ ಆಸ್ತಿ 02 ಗುಂಟೆ ನನಗೆ ಇದೆ ಎಂದು ಹೇಳುತ್ತಾರೆ. ವಾದಿಗೆ ಇರುವ 02 ಗುಂಟೆ ಆಸ್ತಿಯಲ್ಲಿ ವಾದಿ ಅನುಭೋಗದಲ್ಲಿ ಇದ್ದಾರೆ ಎಂದರೆ ಸರಿ.

The above deposition of DW.1 makes it clear that the plaintiff is having 02 guntas of land and he is in possession and enjoyment of

the same. It is necessary to mention here that, it is not the contention of the defendants that, the plaintiff is having said 02 guntas of land in some other survey number and it is not the suit land. As such, the deposition of the DW.1 goes to suggest that, the suit land belongs to the plaintiff and he is in possession of the same. Thus, the documentary and oral evidence produced by both the parties suggests that, the suit land originally belonged to the plaintiff's family and he having inherited the same is in its possession and enjoyment.

17. At this stage, it is further relevant to mention that, name of the plaintiff has been entered to the records of suit land long back in the year 1998-99. However, the defendants have not challenged the said entry till today. As such, long standing entry of the plaintiff's name in the records of suit land gives rise to the presumption regarding correctness of the said entry as per Section 133 of the Karnataka Land Revenue Act. The defendants have not produced any material to rebut the said presumption. Thus, this court is of the opinion that the plaintiff has proved that he is in possession and enjoyment of the suit property. Accordingly, Issue No.1 is answered in the Affirmative.

18. **Issue No.2:-** Insofar as the question of interference by the defendants is concerned, the plaintiff in his plaint as well as in his chief examination affidavit stated that the defendants are trying to interfere with his possession over the suit property. Even the PW.2

and 3 in their chief examination affidavits stated that, the defendants are trying to interfere with plaintiff's possession over the suit property.

19. It is relevant to note that, there is no denial of said allegation of interference by the defendants in cross-examination of PW.1. The defendants have not chosen to cross-examine the PW.2 and 3. Their cross-examination is taken as nil since the defendants failed to conduct cross-examination despite giving sufficient time and opportunities. As such, said part of evidence has remained unchallenged and this court has no reasons to disbelieve the same. Hence, issue under consideration is answered in the Affirmative.

20. **Issue No.3:-** Since the plaintiff has successfully proved his possession over the suit property and interference by the defendants, he is entitled to the relief of permanent injunction as sought in the plaint. Hence, issue No 3 is answered in the Affirmative.

21. **Issue No.4:-** In view of the above discussion, the following order is passed.

ORDER

The suit of the plaintiff is hereby decreed with costs.

The defendants and anybody claiming under them are hereby restrained by way of

permanent injunction from interfering with plaintiff's possession over the suit property.

Draw decree accordingly.

(Dictated to the stenographer, transcribed and typed by her, the same is corrected and then pronounced by me in the open court on this the **29th day of September 2020**)

(Arun Chougule)

C/c. Civil Judge and JMFC,
Holenarasipura.

ANNEXURE

Witnesses examined for the plaintiff:

- PW-1 : Krishnegowda S/o Nanjegowda
PW-2 : Basavegowda S/o Late Devegowda
PW-3 : Ramegowda S/o Late Annegowda

Documents marked for the plaintiff:

- Ex.P-1 : RTC pertaining to suit land
Ex.P-2 : Certified copy of mutation register
Ex.P-3 : hand written RTC pertaining to suit land
Ex.P-4 : Haddubastu sketch
Ex.P-5 : Aakarband
Ex.P-6 : Endorsement dated 27.09.2019
Ex.P-7 and 8: Photos
Ex.P-9 : CD
Ex.P-10 : G-tree Affidavit and certificate

Witnesses examined for the defendants:

- DW-1 : Eregowda S/o Late Bommegowda
DW-2 : Yogesha S/o Bommegowda
DW-3 : Kempegowda S/o Puttegowda

Documents marked for the defendants:

- Ex.D-1 and 2: Hand written RTCs pertaining to suit land
Ex.D-3 : Certified copy of ICR 6/1980-81
Ex.D-4 : Pattabook
Ex.D-5 : Record of rights
Ex.D-6 : Application dated 26.02.2014 seeking copies
of 5 and 6
Ex.D-7 : Aakarband
Ex.D-8 : Pakkabook

(Arun Chougule)
C/c Civil Judge and JMFC,
Holenarasipura