

KAHS710007902021



**IN THE COURT OF THE CIVIL JUDGE AT
HOLENARASIPURA.**

Dated this the 8th day of July 2022

PRESENT :- PRAVEEN R J S B.A, L.L.B.,
Civil Judge., Holenarasipura.

ORIGINAL SUIT NO.161/2021

PLAINTIFF/S: Yashodamma W/o Krishnamurthy,
Aged 58 years,
R/o K.Muddanahalli Village,
Hallymysore Hobli,
Holenarasipura Taluk.

(Rep. by Sri.TSK., Advocate)

-V/S-

DEFENDANT/S: Swamy S/o Late Giriaiah,
aged 48 years,
R/o K.MUddanahalli Village,
Hallymysore Hobli,
Holenarasipura Taluk.

(placed Ex parte)

Date of institution of the suit : 08.07.2021

Nature of the suit : Permanent Injunction.

Date of the commencement of
Recording of the evidence : 19.03.2022

Date of which the judgment was
Pronounced : 08.07.2022

Total Duration : Year/s Month/s Day/s
01 00 00

J U D G E M E N T

The Plaintiff is claiming a decree for Injunction in respect of the suit properties contending that the 'A' schedule property is her separate property having acquired the same under a registered sale deed dated 19.10.2020 and that there was a further rectification deed for the reason that there was a discrepancy in the schedule in the original sale deed; that suit 'B' schedule property was again purchased by her on 19.10.2020 under a registered sale deed and again on account of a discrepancy a rectification deed is said to have been executed between herself and her vendor. The grievance of the Plaintiff is that being in peaceful possession of the suit properties the Defendant is causing interference to the same

and resorting to police assistance having proved futile the present suit has been filed.

2. Suit summons having been served my learned predecessor has placed the Defendant exparte.

3. The Plaintiff in support of his case has got marked Ex.P1 to P8 apart from examining himself.

4. Based on the material available on record the points that arise for my consideration are:

1. **Whether the Plaintiff proves that she is in possession of the suit properties?**
2. **Whether the Plaintiff proves interference by the Defendant in respect of the suit properties?**
3. **Whether the Plaintiff is entitled to the plaint relief?**
4. **To What order or decree?**

5. Heard the arguments of the learned counsel for the Plaintiff. My answers to the aforesaid Points are:

Point No.1 : In the Affirmative.

Point No.2 : In the Affirmative.

Point No.3 : In the Affirmative.

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

REASONS

6. **Point No.1 to 4:-** Exhibit P4 and P5 are the Rectification deeds while Exhibit P7 and 8 are the original sale deeds said to have been executed in favour of the Plaintiff. Perusal of Exhibit P4 would indicate that the boundaries mentioned therein tally with what is being claimed by the Plaintiff as 'B' schedule presently. Likewise Exhibit P5 would indicate that the boundaries mentioned therein tally with what the Plaintiff is presently claiming as 'A' schedule property. Exhibit P2 and 3 being the RTC extracts in respect of the suit properties for the years 2020-21 support the plaint averments and the sale transaction as claimed by the Plaintiff. Exhibit P6 further reflects the state of affairs on the revenue side as well as the acknowledgment of the sale transaction in favour of the Plaintiff. Given the

scope of the present suit which is but the question of possession alone, the Plaintiff has been able establish her possession over the suit properties. Exhibits P7 and 8 being the sale deeds, the originals of the said documents are said to have been mortgaged with the Bank and as such non production of the originals have been satisfactorily accounted for by the Plaintiff. Reference in this regard may be had to the judgment of our Hon'ble High Court in the case of **Prakash vs Doddathayamma** in **2014(4) KCCR 2967** wherein it has been held as under

3. The principle is that so long as the original exists and is available, it being the best evidence must be produced. If it cannot be had on account of its loss, destruction, detention by the opponent or third person, who does not produce after notice physical or legal irremovability, or any other cause, secondary evidence is admissible. The rule is only another form of expression for the idea that when you loose the higher proof, you may offer the next best in your power. The

rule does not mean that mens rights are to be sacrificed and their property lost because they cannot guard against events beyond their control. It only means that so long as the higher or superior evidence is within the possession of a party or may be reached by him, he shall give no inferior proof in relation to that.

4. Before a party is entitled to give other secondary evidence of the contents of the original, the non-production of the original must be satisfactorily accounted for. Therefore, when a party is not in possession of primary evidence and he wants to rely on secondary evidence, he is entitled to produce secondary evidence provided he satisfies the conditions stipulated in Section 65 of the Act. In order to satisfy the Court about the existence of conditions stipulated in Section 65, he has to adduce evidence in the witness box on oath. He has to account for non-

production of the original, set out evidence laying a foundation to lead secondary evidence and then he has to lead secondary evidence. It is at that stage, the opposite party or the Court can object to the production of secondary evidence, if no proper foundation is laid. Where the originals were not produced at any time nor was any foundation laid for giving secondary evidence, certified copies are not admissible. When a party gives evidence, a certified copy without proving the circumstances entitling him to give secondary evidence, objection must be taken at the time of admission and will not be allowed at a later stage, for, if the objection had been taken then and there, the party affected could have made it and regularized the proceedings. All these has to be done when the party leading secondary evidence, is in the witness box.

7. The Plaintiff by producing the title documents in her favour and the consequent revenue records has been able to

establish her possession over the suit properties. The Defendant has not even contested the claim of the Plaintiff. The Plaintiff averments have remained un-traversed and the oral and documentary evidence produced by the Plaintiff have remained unchallenged. In the absence of any inbuilt inconsistency otherwise in the case of the Plaintiff, her claim would have to be accepted. Hence I proceed to pass the following;

ORDER

The suit of the Plaintiff is hereby decreed with costs. The Defendant is restrained from interfering with the Plaintiff's possession of the suit properties.

Draw decree accordingly.

(Dictated to Stenographer directly on computer, revised, corrected, signed and then pronounced by me in the open Court on this the 8th **day of July 2022**)

(PRAVEEN R J S)
Civil Judge Holenarasipura.

ANNEXURE**1. List of witnesses examined for the Plaintiff/s:-**

PW.1 : Krishnamurthy

2 List of documents Exhibited for the Plaintiff/s:-

Ex.P1 : General Power of Attorney
Ex.P2 & 3 : RTC extracts
Ex.P4 & 5 : Rectification deed dated 28.6.2021
Ex.P6 : Mutation extract
Ex.P7 & 8 : Certified copy of Sale deed
dated 19.10.2020

3. List of witnesses examined for the Defendant/s:-

-NIL-

4. List of documents Exhibited for the Defendant/s:-

-NIL-

(PRAVEEN R J S)
Civil Judge Holenarasipura.