

KAHS710013842017



Presented on : 28-06-2017

Registered on : 28-06-2017

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

Dated this the 22nd day of July 2021

PRESENT :- **SRI. ANIL PRAKASH, M.P., M.B.A, L.L.B.,**
Prl. Civil Judge and JMFC.,
Holenarasipura.

ORIGINAL SUIT NO.187/2017

PLAINTIFF/S: 1. Radhakrishnabhat
S/o. Padmanabha Bhat
aged about 55 years
R/o Kuvempu Nagar,
Channarayapattana Town.

(By Sri.H.P.S., Advocate)

-VS-

DEFENDANT/S: 1. The Chief Secretary,
Government of Karnataka,
represented by Vidhana Soudha,
Bangalore-1.

2. The Director,
Department of Public Instructions,
Government of Karnataka,
Vidhana Soudha,
Bangalore.

3. The Assistant Director,
Department of Public Instructions,
Hassan District. Hassan.
4. The Block Education Officer,
Holenarasipura Taluk,
Holenarasipura.
5. Sri. Pandu,
The Block Education Officer,
at present working at
The District director,
Akshara Dasoha,
Jilla Panchayath, Chamarajanagar,
Chamarajanagara District.
6. The Head Master,
High School,
Singapura Village, Kasaba Hobli,
Holenarasipura Taluk.
7. M.V.Bhat S/o Padmanabhabatt,
aged about 70 years,
R/o Singapura village,
Kasaba Hobli,
Holenarasipura Taluk.
8. S.R. Rajegowda S/o Rangegowda,
aged about 68 years,
9. Ramakrishna Bhovi
S/o Puttaswamy Bhovi,
aged about 59 years,
10. Ramaiah S/o Manjaiah,
aged about 70 years,
11. Thimmegowda S/o Kalegowda,
aged about 57 years,

12. Krishnegowda S/o Thimmegowda,
aged about 66 years,
13. Mudligirigowda S/o Venkategowda,
aged about 46 years,
14. Amasegowda S/o Lakkegowda,
aged about 56 years,

D-8 to 14 are R/o Singapura village,
Kasaba Hobli, Holenarasipura Taluk.
Hassan District.

**(D1 to 4 & 6 By learned AGP.
D7 By Sri.B.N.R., Advocate
D5 -placed exparte)**

Date of institution of the suit: 28-06-2017

Nature of the suit : Declaration and
Permanent Injunction

Date of the commencement of
Recording of the evidence : 10-01-2019

Date of which the judgment was
Pronounced : 22-07-2021

Total Duration : Year/s Month/s Day/s
04 00 24

J U D G E M E N T

This suit is one for declaration, consequential relief of permanent injunction and to declare Gift deed dated 28.03.2007 executed by defendant No.7 in favour of the defendant No.5 as null and void and also to declare that

the judgment and decree in OS No.199/2012 on the file of Additional Civil Judge and JMFC is not binding on him.

2. Brief case of the plaintiff is that, he has purchased the suit schedule property bearing Sy.No.118 measuring 3 acres through registered sale deed dated 29.09.1993 from Krishnappa and his son Manjunath. Further, Sy.No.118 was phoded and re-numbered as 118/3 which consist of 1 acre 29 guntas of karab. Further regarding karab land he had filed suit in 'OS No.131/2005' against the Government which was decreed and accordingly, he is in peaceful possession to an entire extent.

3. Further, the defendant No.7 is his brother and he has executed Gift deed on 28.03.2007 in favour of defendant No.5 by misusing the mistake of entry in revenue records in his name, but it is a created document and accordingly, revenue entries were mutated in the name of the defendant No.5. Further, the defendant No.5 by getting knowledge of the fact that, the donor i.e. the defendant No.7 is not the owner of the suit schedule property and he has no right to execute gift deed has executed cancellation deed on 04.10.2008 which is registered and by knowing this fact he had preferred suit in 'OS No.257/2012' for the relief of

declaration and permanent injunction, wherein the defendant No.7 has compromised and agreed that his name crept in the revenue record by mistake.

4. Further after obtaining decree in 'OS No.257/2012' he had preferred an application before the Tahasildar and at that time, he got knowledge about proceedings in 'OS No.199/2012' and on the basis of said proceedings, the Tahasildar refused to enter katha in his name, but however he was not a party to the said suit. Further, the said suit was filed only to defraud this plaintiff and on the basis of judgment and decree in the said suit the defendant No.8 to 14 have trespass over the suit schedule property and interfering with his peaceful possession over the suit schedule property.

5. Further, suit schedule property is not a property which belongs to the Government, but however the defendants No.8 to 15 are claiming the suit schedule property as Government property and also trespassing over the same, and for that reason he got issued legal notice to defendants No.1 to 6 on 16.12.2017 under Section 80 of CPC to which none of the defendants have replied, except the defendant No.3 has directed defendant No.4 to take suitable steps and for that reason he has filed this suit.

6. After service of summons, the defendants No.1 to 4 and 6 have appeared before this court through their learned AGP. Sri.B.N.R. Advocate appeared for the defendant No.7 and Sri.K.R.S. Advocate appeared for the defendants No.8 to 14 but they have not filed written statement and not contest the matter. The defendant No.5 has been placed ex-parte.

7. On behalf of plaintiff, he himself got examined as PW.1 and has produced documents marked at Ex P1 to P29 and closed his side.

8. Perused available materials on record, the points that arise for my consideration are:

1. Whether the plaintiff proves that, he is the absolute owner and is in peaceful possession and enjoyment of suit schedule property ?
2. Whether the plaintiff further proves that the defendants are interfering with his peaceful possession and enjoyment over the suit schedule property and for that reason he is entitled for relief of permanent injunction?
3. Whether the plaintiff further proves that the Gift deed dated 28.03.2007 executed by defendant No.7 in favour of defendant No.5 is null and void and for that reason he is entitled for relief of declaration?
4. Whether the plaintiff further proves that, the judgment and decree in

OS No.199/2012 is not binding on him and for that reason he is entitled for relief of declaration?

5. What order or decree?

9. Heard arguments of Advocate for plaintiff, and I have answered the above points accordingly.

Point No.1 : In the Affirmative

Point No.2 : Partly in the Affirmative

Point No.3: In the Affirmative

Point No.4: Does not survive for consideration

Point No.5 : As per final order

for the following:

REASONS

10. **POINT NO.1 to 4** : These points are inter-linked with each other, hence they are taken up together for common discussion to avoid repetitions.

11. In order to substantiate his case, plaintiff got examined as PW.1 and has filed affidavit in lieu of examination in chief which is reiteration of plaint averments. Further, he has produced Ex.P1 to P29 documents. Ex.P1 and 2 are RTC extract, Ex.P3 is the certified copy of sale deed dated 29.09.1983, Ex.P4 is the certified copy of Gift deed dated 28.03.2007, Ex.P5 is the certified copy of Cancellation deed dated 07.10.2008,

Ex.P6 is the legal notice, Ex.P7 to 18 are the Postal receipts and postal acknowledgement, Ex.P19 is the certified copy of judgment and decree in 'OS No.39/2012, Ex.P20 is the reply notice, Ex.P21 is the certified copy of order sheet in OS No.199/2012, Ex.P22 is the certified copy of plaint and written statement in OS NO.199/2012, Ex.P23 is the certified copy of order passed in IA in OS No.199/2012, Ex.P24 is the legal notice, ExP25 is the certified copy of judgment and decree in OS NO.131/2005, Ex.P26 is mutation extract in MR No.3/2014-15, Ex.P27 and 28 are the hand written RTC, Ex.P29 is the certified copy of mutation extract in MR No.21/1993-94.

12. On perusal of Ex.P3 which the certified copy of registered sale deed dated 29.09.1993, wherein the recitals discloses that plaintiff has purchased the property bearing Sy.No.118 measuring 3 acres from Krishnappa and his son Manjunath and if we peruse Ex.P29 which the mutation entry in 'MR No.21/1993-94' discloses that the transfer of his name in mutation register and Ex.P27 and 28 which are manual record of rights discloses his name in column No.9 and 12 and on perusal of said title deed and revenue record it is clear that, he is the owner of suit schedule property and is in possession and enjoyment over the same.

13. Further it is pertinent to refer that Ex.P19 and 20 which is judgment and decree in 'OS No.199/2012' which is preferred by defendant No.8 to 14 of this suit, wherein they have taken the contention that, defendant No.6 of the said suit who is none other than the defendant No.7 of this suit as the owner of the suit schedule property and for that reason it is clear that the defendant No.8 to 14 are indirectly denying the title of plaintiff over suit property and at this stage it is essential to extract Section **34 of Specific Relief Act:**

Discretion of Court as to declaration of status or right: Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such 2 character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

PROVIDED that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

and by reading above provision it is clear that, the plaintiff can file suit against the person who has denied

his title or interest to deny his title and in this case though there is no specific averments that the defendants No.8 to 14 have denied his title, but from the document at Ex.P19 it is clear that they are the person interested to deny his title. Further, regarding interference the plaintiff has clearly stated that after judgment and decree at Ex.P19 they are interfering with his peaceful possession and the said evidence and materials placed by the plaintiff is not denied by the defendants, but however it is pertinent to note that regarding interference the plaintiff has not stated anything against the defendant No.1 to 7 but according to the plaint averments it is the defendant No.8 to 14 are interfering with possession and for that reason though he is entitled for relief of declaration but relief of permanent injunction can be granted against the defendant No.8 to 14 and accordingly, **Point No.1 answered in the Affirmative and Point No.2 Partly in the Affirmative,**

14. **Point No.3:** The plaintiff has averred that, the defendant No.7 has executed Gift deed in favour of defendant No.5 and the same is null and void and regarding the execution of gift deed this Additional Civil Judge and JMFC court at Ex.P19 discuss about execution of gift deed and in reasoning portion of issue No.2 has discussed that, the gift deed is executed by

defendant No.7 but however the learned counsel for the plaintiff has produced certified copy of Judgment and decree in 'RA No.38/2016' before Hon'ble Senior Civil Judge and JMFC, at Holenarasipura wherein Hon'ble court has held detailed discussion on execution of Gift deed and clearly stated that, the defendant No.7 had no title to execute the gift deed and in this case though the defendant No.7 is impleaded but he has not filed any written statement nor led any evidence and for that reason the defendant No.7 had no right to execute gift deed and for that reason the same is not binding on plaintiff and accordingly **Point No.3 answered in the Affirmative.**

15. **Point No.4:** This point relates to the aspect that, the judgment and decree in 'OS No.199/2012' is not binding on this plaintiff, but if we peruse the operative portion of judgment in 'RA No.38/2016' then it is clear that Hon'ble Court of Senior Civil Judge and JMFC, at Holenarasipura has set aside the judgment and decree at Ex.P19 and in view of the judgment of Hon'ble Court there is no judgment and decree at Ex.P19 and it is merge in 'RA No.38/2016' and accordingly, the said point does not survive for consideration.

16. **Point NO.5:** As per my findings on the above points, I proceed to pass the following:-

ORDER

The suit of the plaintiff is hereby decreed accordingly.

The plaintiff is declared as absolute owner of suit schedule property.

The defendants No.8 to 14 their agents or anybody are anybody claiming under them are restrained by of permanent injunction from not to interfering with peaceful possession and enjoyment of plaintiff over suit schedule property.

The Gift deed dated 28.03.2007 is declared as null and void.

No order as to costs.

Draw Decree Accordingly.

(Dictated to Stenographer transcript computerized by her revised, corrected, signed and then pronounced by me in the open court on this the 22nd day of July 2021)

(ANIL PRAKASH M.P.)
Prl. Civil Judge & JMFC
Holenarasipura.

ANNEXURE

1. List of witnesses examined for the plaintiff/s:-

PW.1 - Radhakrishna Bhat

2. List of witnesses examined for the defendant/s

NIL

3. List of documents exhibited for the plaintiff/s:-

Ex.P.1 & 2	:	RTC extracts
Ex P.3	:	certified copy of sale deed
Ex.P.4	;	Certified copy of Gift deed
Ex.P.5	:	Certified copy of cancellation of gift deed
Ex.P.6	:	Legal notice
Ex.P.7 to 12	:	Postal receipts
Ex.P13 to 18	:	Postal acknowledgement
Ex.P19	:	Certified copy of judgment and decree in OS No.199/2012
Ex.P20	:	Reply notice
Ex.P21	:	Certified copy of order sheet in OS No.199/2012
Ex.P22	:	certificate copy of plaint and W/s in OS No.199/2012
Ex.P23	:	certified copy of order passed in IA in OS No.199/2012
Ex.P24	:	Legal notice
Ex.P25	:	Certified copy of judgment and decree in OS No.131/2005
Ex.P26	:	certified copy of mutation in MR No.3/2014-15
Ex.P27 & 28	:	Hand written RTC
Ex.P29	:	mutation in MR No.21/1993-94

4. List of documents exhibited for the defendant/s:-

NIL

Prl. Civil Judge & JMFC
Holenarasipura

