

KAHS710001992024



**IN THE COURT OF CIVIL JUDGE & J.M.F.C., AT
HOLENARASIPURA**

PRESENT: SMT. CHETHANA, B.A.,L.L.B.,
Civil Judge & JMFC.,
Holenarasipura.

DATED THIS THE 22nd DAY OF JANUARY-2025

O.S.No.69/2024

Plaintiff/s :

Sri.Prabhakara B.N.,
S/o. Late. Narasimhamurthy B.R.,
Aged about 65 years,
R/at: KHB Colony,
No.9/A, Kowstubha,
Holenarasipura Town
Hassan District.

(Rep. by H.S.,Advocate)

-Vs-

Defendant/s :

1. Smt.Ningajamma,
W/o. Thimmaiah,
Aged about 48 years,

2. Sri.Thimmaiah,
aged 58 years,

Both are R/at: Beechenahalli Village,
Halekote Hobli,
Holenarasipura Taluk,
Hassan District.

(By.Sri.K.J.T., Advocate)

Date of Institution of suit	:	09.02.2024
Nature of suit	:	Declaration and Permanent Injunction
Date of commencement of recording of evidence	:	02.07.2024
Date on which the judgment is pronounced	:	22.01.2025
Total duration		Years 00
		Months 11
		Days 13

(SMT. CHETHANA)
 Civil Judge & JMFC.,
 Holenarasipura.

:: JUDGMENT ::

This is the suit filed by the plaintiff against the defendants seeking the relief of Declaration and Permanent Injunction over the suit schedule property.

2. The case of the plaintiff is as follows:-

The Plaintiff has purchased the suit schedule property on 02.11.2023 from wife of Late. Javaraiah and his children. After the purchase, he has got changed the *khatha* into his name and also paying tax to the Government. There is no relationship between the Defendants and suit schedule property. Eventhough, there is no right or interest to the Defendants over the schedule property, out of 0.24 guntas in Sy.No.60/6 which is belonging to the

Plaintiff, they have encroached 0.05 guntas. In this regard, the Plaintiff has submitted an application for getting the property measured for the purpose of *hudbust* in order to convert the property for non agricultural purpose. At the time of survey, the Plaintiff came to know the fact of the Defendants encroaching the property. The Defendants troubling the Plaintiff by encroaching the schedule property. Evethough, there is no road over the schedule property, they have threatened the Plaintiff to leave road over the same. The Plaintiff is intending to establish a unit of manufacturing electric poles and also stored materials in relation to the same. The said material may be destroyed and may be stolen. Only with the intention of troubling the Plaintiff and not tolerating his development, they have encroached the property. When the Plaintiff requested in the presence of panchayathadars to hand over the encroached portion, the Defendants have not heeded to their words. Therefore, the Plaintiff is constrained to file this suit seeking the relief of Declaration and Permanent Injunction. On these grounds, it is prayed to decree the suit.

3. Eventhough, the Defendants have entered appearance they have not filed written statement. Therefore, they have not

contested the matter. Hence, in order to reach definite conclusion, the following points arise for the consideration of this Court:

POINTS

1. Whether the plaintiff proves that, he is the absolute owner in peaceful possession and enjoyment of the suit schedule property?
2. Whether the plaintiff proves that, the Defendants are interfering into his peaceful possession and enjoyment over the suit schedule property?
3. Whether the plaintiff is entitled for the reliefs sought for?
4. What Order or decree?

4. In order to prove the case of the plaintiff, he himself got examined as PW.1 and got marked 3 documents at Exs.P1 to 3. On the other hand, the defendants have not contested the case.

5. Heard argument of learned counsel for the plaintiff and perused entire material available on record. The answer of this Court to the above points are as follows:

- | | |
|--------------|--------------------|
| Point No.1 : | In the Negative |
| Point No.2 : | In the Negative |
| Point No.3 : | In the Negative |
| Point No.4 : | As per final order |
- For the following:

REASONS

6. POINT NO.1 : This Court has already narrated the case of the plaintiff. In order to substantiate the averments made in the plaint, the plaintiff himself got examined as PW.1 and filed affidavit in lieu of his examination-in-chief. In the affidavit, he has reiterated the facts stated in the plaint and got marked Exs.P1 to 3. Ex.P1 is the online copy of Sale Deed dated 02.11.2023; Ex.P2 is the survey sketch; Ex.P3 is the RTC extracts pertaining to the property in Sy.No.60/6 measuring 24 guntas.

7. It is the specific contention of the Plaintiff that, the Defendants have encroached suit schedule property measuring 0.05 guntas out of 0.24 guntas in Sy.No.60/6. The Ex.P1 relied upon by the Plaintiff, no doubt, shows that, he has purchased 0.24 guntas of property in Sy.No.60/6 of Beechenahalli village along with other properties. Entire pleading of plaintiff nowhere discloses as to which portion of property out of 0.24 guntas has been encroached by the Defendants. It is worth to note here that, in the Ex.P1 the schedule given to 0.24 guntas of property in Sy.No.60/6 is East by: the land of H.V.Arun S/o.Late.H.S.Virupakshappa, West by: the land of Muttamma W/o. Kalaiah and Ningarajamma W/o.

Thimmaiah, North by: Canal and the land which the Plaintiff has purchased in Sy.No.60/5 and South by: the property of Rathnamma W/o. Erappa. The suit schedule property is measuring 0.05 guntas in Sy.No.60/6. The schedule given is East by: the land of H.V.Arun S/o.Late.H.S.Virupakshappa, West by: the land of Muttamma W/o. Kalaiah, North by: Canal and the property which the Plaintiff has purchased in Sy.No.60/5 and South by: the land of Rathnamma W/o. Erappa. Therefore, it shows that, the schedule given to 0.24 guntas of property in the Ex.P1 and the schedule given to 0.05 guntas of property in the plaint are one and the same. Hence, the plaintiff has shown schedule to 0.05 guntas in the plaint of the property measuring 0.24 guntas. The schedule given to 0.05 guntas of property would have been different than the schedule shown in Ex.P1 for 0.24 guntas. The Plaintiff must specifically plead everything in detail and thereafter adduce evidence in support of his pleading. Eventhough, the plaintiff has produced Ex.P2 to show that, there is encroachment of property of plaintiff, merely based on the said document, without pleading it is not safe to conclude that, there is encroachment. No doubt, the Plaintiff might be the owner of 0.05 guntas of property alleged to have been encroached by the

Defendants. However, since there is no clear pleading and schedule being shown to the schedule property, this Court is of the view that, it is not safe to declare that, he is the owner of suit schedule property. Hence, the Plaintiff is not successful in proving point No.1. Accordingly, Point No.1 is answered in the **Negative**.

8. Point No.2: The Plaintiff has specifically pleaded that, Defendants have already encroached 0.05 guntas of property and when they requested to hand over the possession of the same, the Defendants have not heeded to their words. This makes it clear that, the Plaintiff is not in possession of said 0.05 guntas of property. In the present case, the Plaintiff has not sought the relief of possession of schedule property. But, he has sought to declare himself as the owner and to restrain the Defendants from interfering into his possession over the same. But, as stated above, when from the pleading of the Plaintiff itself, it can be inferred that, the Plaintiff is not in possession of said 0.05 guntas of property, there is no question of Defendants interfering into his possession over said 0.05 guntas. Therefore, the Plaintiff has not made out any grounds to restrain the Defendants as sought. Accordingly, Point No.2 is answered in the **Negative**.

9. POINT No.3: Since, the Plaintiff has not made out any grounds to declare that, he is the owner in possession of the suit schedule property and the Defendants are interfering into possession, the Plaintiff is not entitled to any relief which he sought. Accordingly, Point No.3 is answered in the **Negative**.

10. Point No. 4: For the reasons stated while discussing point Nos.1 to 3, this Court proceed to pass the following:

ORDER

The suit of the plaintiff is hereby dismissed.

No order as to costs.

Draw decree accordingly.

(Dictated to the stenographer directly on to the computer typed by her, transcript revised, corrected and then pronounced by me in the open court this the 22nd day of January-2025)

(SMT.CHETHANA)
Civil Judge and JMFC,
Holenarasipura.

:ANNEXURES::

LIST OF WITNESS EXAMINED BY THE PLAINTIFF:

PW.1: Prabhakara B.N.

LIST OF DOCUMENTS MARKED FOR THE PLAINTIFF:

Ex.P1: Online copy of Sale Deed dated 02.11.2023

Ex.P2 : Online copy of Survey Sketch

Ex.P3 : RTC extract

LIST OF WITNESS EXAMINED BY THE DEFENDANT:

- NIL -

LIST OF DOCUMENTS MARKED FOR THE DEFENDANT:

- NIL -

(SMT. CHETHANA)
Civil Judge and JMFC
Holenarasipura.