

IN THE COURT OF THE CIVIL JUDGE

BYADGI

PRESENT: ***Sri.Srinivas H.Budarapura B.A.LL.B.,(Spl).***,
Civil Judge, Byadgi.

DATED THIS THE 10th DAY OF MARCH, 2016

ORIGINAL SUIT NO: 89-2011

PLAINTIFF: Gurunanjaiah Sangaiah Devagiri
Age: 50 years, Occ: Agriculture,
R/o: Chikkabasur, Tq:Byadgi, Dist: Haveri.

(By Sri. G.M.Angadi-Advocate)

V/s

DEFENDANTS: 1)Ganeshappa Shivappa Kalmani
Age: Major years, Occ: Agriculture & Business,
R/o: Chikkabasur, Tq: Byadgi, Dist: Haveri.

2)Mahadevappa Shivappa Kalmani
Age: Major years, Occ: Agriculture & Business,
R/o: Chikkabasur, Tq: Byadgi, Dist: Haveri.

(By Sri.R.N.Paled-Advocate)

Date of institution of the suit :	01.08.2011
Nature of the suit :	Possession & Permanent Injunction
Date of the commencement of recording evidence :	17.09.2014
Date on which the judgement was pronounced :	10.03.2016
Total duration :	04Years 07Months 09Days

(Sri. Srinivas H. Budarapur)
Civil Judge, Byadgi.

JUDGEMENT :

This is a suit filed by the plaintiff against the defendants for the relief of possession & permanent injunction.

2. Brief facts of the case:-

The suit schedule property bearing No.197/1A/2 N.A. land 12 measuring 4Acre and it is contains shed and open space. The plaintiff has purchased the suit land on 08.09.1999 for consideration of Rs.16,000/-, and he is in possession of the same. On the southern side he was put up a 6 windows. Now the defendant is encroaching the said open space and wants to construct a building in the open space. The plaintiff has requested the defendants not to construct a building. The defendant has not heeded the request of the plaintiff. If the defendant will going to construct a building it is difficult to enjoy the air and light by the plaintiff. Hence the plaintiff has constrained to file this suit.

3.After the institution of the suit, the summons were issued to the defendants, and defendant No.2 appeared through their counsel, and filed their written statement contending that, the description of the property shown by the plaintiff is not correct. There is no open space as alleged by the plaintiff. The survey No.197/1A/2 is a self acquired property of defendant No.2. There is no such building constructed in the southern side of the suit land. The plaintiff has put up the windows in the presence of elders of villagers

by compromising, and he is also agreed to remove the said windows as and when required to the defendant No.2. Further, he has also made a agreement that, he will not going to file any suit in respect of the same. The plaintiff has constructed first and second floor, and he has given said building to the rent. The plaintiff is intended to gulp the property of defendant, and denied the other contents of plaint.

4. On the basis of above pleadings, the following issues were framed.

1) Whether the plaintiff proves that he is the owner of the suit schedule property?

2) Whether the plaintiff proves that the defendants have encroached into the suit property to the extent of 12 feet by the side of the southern side wall of his house and illegally constructed building in the said area?

3) Whether the plaintiff is entitled for the reliefs as prayed for?

4) What order or decree?

5. In order to prove the above issues, the plaintiff himself examined as PW-1, and got marked Ex.P-1 to Ex.P-21. On the

other hand, the defendant No.1 has examined as DW-1, and one more witness examined as DW-2, closed their side.

6.Heard the arguments

7.My findings on the above issues are as under:

Issue No.1	:	In the Affirmative
Issue No.2	:	In the Affirmative
Issue No.3	:	In the Affirmative
Issue No.4	:	As per the final order.

:REASONS:

8. **Issue No.1:** It is the case of the plaintiff that, the plaintiff is the owner of suit schedule property bearing No.197/1A/2, and he was purchased the same on 08.09.1999 for consideration of Rs.16,000/-, and he is in possession of the same. The plaintiff has put up a 6 windows on the southern side. The suit property is consisting of shed and open space. Now the defendants are intended to encroach the property of plaintiff, and plaintiff has requested to the defendant not to encroach the same. In spite of this, the defendants are not heeded the request of the plaintiff. In order to prove the same, the plaintiff himself examined as PW-1, and got marked Ex.P-1 to Ex.P-21. Ex.P-1 is the R.T.C, Ex.P-2 is the certified copy of sale deed, Ex.P-3 is the 'J' form, Ex.P-4 is the notice copy, Ex.P-5 to Ex.P-7 are the postal receipts, Ex.P-8 is the request letter, Ex.P-9 is the notice, Ex.P-10 to Ex.P-12 are the postal receipts, Ex.P-13 is the Panchadasta, Ex.P-14 is the notice, Ex.P-15 to Ex.P-17 are the postal receipts, Ex.P-18

is the statement, Ex.P-19 is the R.T.C, Ex.P-20 is the house extract, Ex.P-21 is the map.

9. On the other hand, it is the defence set out by the defendant that, the description shown by the plaintiff is not correct. There is no open space as alleged by the plaintiff. The plaintiff has agreed before elders of the villagers and put up the 6 windows. Further, he has also agreed that, he will going to remove the said windows as and when required by the defendant. Further, he is also agreed that, he will not going to file any suit in respect of the same. The plaintiff has constructed a building and wants to gulp the property of the defendant, and denied the other contents of plaint. In order to prove the same, the defendant No.1 has examined as DW-1, and one more witness examined as DW-2.

10.The counsel for plaintiff put forth his argument that, the defendant No.1 has no right title over the suit property. The defendants have taken a defence that, they have constructed a building in the plaintiff's land. The defendants have not a submits that, the said land was N.A. Land. The defendant has not examined the defendant No.2. the defendant No.1 has also not produced any document, and prayed for decreetal of the suit.

11.The counsel for the defendant No.1 put forth his argument that, on which side 12 feet open space he is situated and also not submitted, the measurement of east and west. The Surveyor has also submitted his report. The plaintiff has utterly failed to prove his case. Hence prayed for dismissal of the suit.

12. I have gone through the material available on record. It is the case of the plaintiff that, the plaintiff is in possession of the suit schedule property bearing No.197/1A/2, and he was put up a 6 windows on the southern side of suit land. The suit land is consisting of open space and shed. Now the defendants are intended to construct a building by encroaching the suit land. It is the burden lies on the plaintiff to prove that, he is owner of suit schedule property. I would like to draw my attention towards Ex.P-19, on perusal of the Ex.P-19, it reveals that, the name of the plaintiff is appearing in the owners column as well as in the cultivators column. This itself clearly goes to show that, the plaintiff is the owner of suit land, and he is in possession of the same. Further, I would like to draw my attention towards cross examination of DW-1. ವಾದಿ ಮನೆಯನ್ನು ಕಟ್ಟಿಸಿ ಅಂದಾಜು 20 ರಿಂದ 22 ವರ್ಷಗಳಾಗಿವೆ ಅಂದರೆ ನಿಜ. This itself clearly goes to show that, the plaintiff was constructed a building in the suit land since from 20-22 years back. On going through the materials available on record, and evidence adduced by the defendant. This itself clearly goes to

show that, the plaintiff is owner of the suit schedule property, and he is in possession of the suit land. Hence on the light of above discussion I answered issue No.1 in the affirmative.

13. **Issue No.2:** It is the burden lies on the plaintiff prove that, the defendants have encroached into the suit property to the extent of 12 feet on southern side wall and constructed a illegally a building in the said area. I would like to draw my attention towards cross examination of DW-1. ದಾವಾ ಆಸ್ತಿಯ ದಕ್ಷಿಣ ದಿಕ್ಕಿನ ಗೋಡೆಗೆ ಹೊಂದಿ ಖಾಲಿ ಜಾಗೆ ಇದೆ. This itself clearly goes to show that, there is a open space on the southern side. Further, the DW-1 himself deposed on oath that, ದಾವಾ ಆಸ್ತಿಯ ದಕ್ಷಿಣ ದಿಕ್ಕಿಗೆ ಹೊಂದಿಕೊಂಡು ಖಾಲಿ ಜಾಗೆ ಇದೆ. ಸಾಕ್ಷಿ ಮುಂದುವರೆದು ನಾನು ಪಂಚಾಯತಿ ಜಾಗೆಯಲ್ಲಿ ಶೆಡ್‌ನ್ನು ಕಟ್ಟಿದ್ದೇನೆ ಅಂತಾ ಸಾಕ್ಷಿ ನುಡಿಯುತ್ತಾರೆ. Further, he deposed on oath that, ಸದರಿ ಶೆಡ್ ಕಟ್ಟಿದ ಬಗ್ಗೆ ದಾಖಲೆಗಳನ್ನು ಹಾಜರುಪಡಿಸಿರುವುದಿಲ್ಲ. Further, ದಾವಾ ಆಸ್ತಿಯ ದಕ್ಷಿಣ ದಿಕ್ಕಿಗೆ ಈ ಮೊದಲು ಇದ್ದ ಕಟ್ಟಿಗೆಯ ಅಂಗಡಿಯನ್ನು ತೆಗೆದು ಈಗ ಗೋಡೆಯನ್ನು ಕಟ್ಟಿದ್ದೇನೆ. This itself clearly goes to show that, earlier there was a open space on the southern side of the suit land, and defendants have constructed a wall on the southern side. The defendant No.1 himself deposed on oath that, he has constructed a building i.e., wall on the southern side of the suit land. Hence, looking into the facts and circumstances of the case, the plaintiff has proved that, the defendant has constructed a wall on the southern side of the suit land by

encroaching open space. Hence on the light of above discussion I answered issue No.2 in the affirmative.

14. **Issue No.3:** When the plaintiff himself proved that, he is the owner of the suit land, and defendants have constructed a building or constructed a wall on the southern side of the suit land by encroaching open space. Certainly, the plaintiff is entitled for relief as sought. Hence on the light of above discussion I answered issue No.3 in the affirmative.

15. **Issue No.4:** As per the final order.

:ORDER:

The suit of the plaintiff is hereby decreed.

The defendants are hereby directed to remove the said wall which is constructed on the southern side of suit land within 6 months from the date of this Judgement.

No order as to cost.

Draw decree accordingly.

(Dictated to the Stenographer, transcription typed by her, revised and corrected by me, signed and then pronounced in the open Court on this 10th Day of March, 2016)

(Sri.Srinivas H. Budarapur)
Civil Judge, Byadgi.

: ANNXTURE :**1. Number of witnesses examined for plaintiff :**

PW-1 : Prashanth Gurunanjaiah Devagiri

2. List of documents exhibited for plaintiff:

Ex.P-1 : R.T.C
Ex.P-2 : Certified copy of sale deed
Ex.P-3 : 'J' Form
Ex.P-4 : Notice Copy
Ex.P-5to7 : Postal Receipts
Ex.P-8 : Request Letter
Ex.P-9 : Notice
Ex.P-10to12: Postal Receipts
Ex.P-13 : Panchadasta
Ex.P-14 : Notice
Ex.P-15to17: Postal Receipts
Ex.P-18 : Statement
Ex.P-19 : R.T.C
Ex.P-20 : House Extract
Ex.P-21 : Map.

3. Number of witnesses examined for defendants:

DW-1 : Ganeshappa Shivappa Kalmani
DW-2 : Mahadevaiah Basaiah Mathad

4. List of documents exhibited for defendants: -Nil:-

Civil Judge & JMFC.,
Byadgi.

