

KAHV310002402017



Presented on : 07-06-2017
Registered on : 07-06-2017
Decided on : 20-12-2021
Duration : 4 years, 6 months, 13 days
C.R.P.67]

Form No.9 (Civil)
Title Sheet for
Judgment in Suits
(R.P.91)

TITLE SHEET FOR JUDGMENT IN SUITS

IN THE COURT OF THE CIVIL JUDGE AND JMFC.,
AT HANGAL

Present: Sri. JANARDHANA S.K., B.A.L., LL.B.,
Civil Judge and JMFC., Hangal.

ORIGINAL SUIT No.161 OF 2017

DATED THIS THE 20th DAY OF DECEMBER - 2021

- Plaintiffs** : 1. Sri. Mallappa S/o Shivappa Doddamani
Age: 68 years, Occ: Agriculturist
R/o: Shreeramapura village,
Tq: Hangal, Dist: Haveri.
2. Sri. Fakkirappa S/o Fakkirappa
Doddamani, Age: 46 years,
Occ: Agriculturist,
R/o: Shreeramapura village,
Tq: Hangal, Dist: Haveri.
3. Sri. Parasappa S/o Fakkirappa
Doddamani, Age: 35 years,

Occ: Agriculturist,
R/o: Shreeramapura village,
Tq: Hangal, Dist: Haveri.

(By Sri. R.S.Talavar – Adv.)

V/s.

Defendant : Sri. Shankarappa S/o Basavanneppa Gali
Age: 55 years, Occ: Agriculturist
R/o: Araleshawara village, Tq: Hangal.

(Exparte)

**(Sri. Janardhana S.K.)
Civil Judge & JMFC.,
Hangal.**

Date of institution of the suit : 07-06-2017

Nature of the suit : For Permanent
Injunction

Date of commencement of
recording the evidence : 17-08-2021

Date of pronouncement of
Judgment : 20-12-2021

Duration of the suit : Year/s Month/s Day/s
04 06 13

**(Sri. Janardhana S.K.)
Civil Judge & JMFC.,
Hangal.**

JUDGMENT

The plaintiffs have filed this suit against the defendant for the relief of permanent injunction to restrain the defendant, his agents or anybody acting under him in peaceful possession and cultivation of suit schedule properties, for cost of the suit and such other reliefs this court deems fit to grant in the circumstances of the case.

2. The brief facts of the plaintiffs case is as follows:-

One Sri. Shivappa is the propositus of plaintiffs who died living behind 2 sons by names Sri.Fakkirappa and Sri. Mallappa, the plaintiff No.1. Among them, Sri. Fakkirappa has died on 23-07-2007 by living behind Sri. Shanthavva as his wife and Sri. Fakkirappa and Sri. Parasappa, the plaintiff No.2 and 3 as his legal heirs. The plaintiff No.1 is the uncle of plaintiff No.2 and 3. The land in Sy.No.7 measuring 1-acre 3-guntas of land situated at Shiramapura village of Hangal Taluk has been inherited by the plaintiffs from their ancestors and plaintiffs have got partitioned the said property in an oral partition. As per oral partition, 21½ guntas of land fallen to the share of plaintiff No.1 and same is phoded as Sy.No.7/8. and remaining 21½ guntas of the land fallen to the joint shares of plaintiff No.2 and 3 and they intern divided the said extent of land in an oral partition. In the said oral partition, 10½ guntas of land fallen to the share of plaintiff No.2 and remaining 11 gutnas of land fallen to the share of plaintiff No.3 and same have been phoded as Sy.No.7/5B and

Sy.No.7/7 respectively. The plaintiffs have been in possession and cultivation of the suit schedule properties by growing several crops thereon. The defendant having no manner of right and interest in the suit schedule properties had obstructed in peaceful possession and enjoyment of the same on 12-05-2017. In spite of good words extended by the elders of village, the defendant has continued to interfere in peaceful possession and enjoyment of the suit schedule properties by the plaintiffs which constrained them to file suit for permanent injunction.

3. Despite due service of suit summons, the defendant remained absent and consequently placed exparte.

4. The points that would arise for the consideration of this Court are as follows:-

POINTS

- 1. Whether the plaintiffs prove that themselves were in possession of the suit schedule properties as on the date of suit?***
- 2. Whether the plaintiffs prove that the alleged interference of the defendant in peaceful possession and enjoyment of the suit schedule properties?***
- 3. Whether the plaintiffs are entitle for relief of permanent injunction as sought for?***
- 4. What order or decree?***

5. In order to prove the case of the plaintiffs, the plaintiff No.1 has examined himself as PW-1 and got marked Ex.P1 to P8 documents.

6. I have heard the arguments of plaintiffs' counsel, perused oral and documentary evidence on record.

7. The findings of this Court on aforesaid points are as follows:-

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 following:-***

REASONS

8. **Point No.1 and 2:-** As both the points are interlinked to each other, they are taken together for common discussions to avoid repetition of facts and evidence. The plaintiffs have filed this suit against the defendant for relief of perpetual injunction to restrain him or his agents or anybody acting under him in peaceful possession and cultivation of suit schedule properties.

9. As per section 38 of the Specific Relief Act of 1963, the Court can grant the perpetual injunction in favour of the plaintiff in order to prevent breach of an obligation existing in favour of the plaintiff and when the defendant invades or

threatens to invade plaintiff's right to, or enjoyment of, property when there exists no standard for ascertaining actual damage caused, or likely to be caused by such invasion or such a invasion is such that compensation in money would not afford adequate relief and also in order to prevent a multiplicity of the judicial proceedings.

10. It is case of the plaintiffs that they have been in possession and enjoyment of the suit schedule properties which are respectively fallen to their shares in an oral partition took place in between themselves. In the said oral partition, land in Sy.No.7/8 to an extent of 21½ guntas of land fallen to the share of the plaintiff No.1 and land in Sy.No.7/5B to an extent of 10½ guntas of land fallen to the share plaintiff No.2 and remaining land in Sy.No7/7 to an extent of 11 guntas of land fallen to the share of plaintiff No.3 which are phoded into said survey numbers out of original land Sy.No.7/7 measuring 1-acre 3-guntas of land situated at Shiramapura village and same has been inherited from their ancestors. As the defendant interfered in peaceful possession and enjoyment of the suit schedule properties by the plaintiffs and continue to interfere in peaceful possession and enjoyment despite good words extended by the elders of the village, hence this suit for permanent injunction.

11. To substantiate said plaint averments, as stated earlier, the plaintiff No.1 has examined himself as PW-1 by filing affidavit in lieu of his examination in chief, wherein he has reiterated the similar facts averred in the plaint. In proof of oral evidence, the plaintiff No.1/PW-1 has got marked Ex.P1 to P8 documents.

12. Ex.P1 is a record of rights in respect to land in Sy.No.7/8 measuring 0.21.08-guntas, Ex.P2 is a another RTC pertains to land in Sy.No7/5B measuring 0.10.08-guntas, Ex.P3 is yet another record of rights in respect to land in Sy.No.7/7 measuring 11-gutnas of land, Ex.P4 to P6 are the village form No.24/A in respect to said properties respectively and Ex.P7 and 8 are the tax paid receipts.

13. On perusal of contents of Ex.P1 to P3 which are record of rights disclose that land in Sy.No.7/8 to an extent of 0.21.08 guntas is stands in the name of plaintiff No.1, land in Sy.No.7/5B measuring 0.10.08 guntas stands in the name of plaintiff No.2 and land in Sy.No.7/7 to an extent of 11-guntas is stands in the name of plaintiff No.3 which are said to fallen to their respective shares in an oral partition. The entries found in Ex.P1 to P3 clearly goes to show that the plaintiffs are the possessors and cultivators of the suit schedule properties as denotes in column No.9 and 12 of Ex.P1 to P3 record of rights. Under section 133 of Kanrataka Land Revenue Act presumption that entries in record rights,

mutation including patta book are presumed to be correct until contrary proved or legally substituted. Such being the provision, there is no ground to disbelieve the contents of Ex.P1 to P3 which are for the period of 2016-17 that the plaintiffs were in possession of the suit schedule properties as on the date of suit.

14. It is pertinent note that the case of the plaintiffs remained unchallenged and unrebutted as the defendant despite due service of suit summons remained absent and not contest the case of the plaintiffs. Accordingly an adverse inference can be drawn that the case set up by the plaintiffs is true and correct. Moreover, Ex.P4 to P6 which are the village form Nos.24/A obtained on 16-05-2017 and just week prior to file of suit further establish that the plaintiffs were and have been in possession and enjoyment of the suit schedule properties. It is further pertinent to note that alleged interference by the defendant also undisputed and uncontraverted.

15. The Hon'ble High court of Karnataka in a decision reported in **1999(1) Kar.L.J 536 in between Smt. Lakshamma Vs M.P. Krishnappa and others**, has categorically held and observed as follows:

“Once the Appellate Court finds the possession is with the plaintiff, thus rendering a concurrent finding with the trial court, there should not be any hesitation on the part of the

Appellate court to grant injunction. An aggrieved person comes to the court complaining of interference, but the defendant, may be at a particular point of time the defendant has not caused interference, once the fear stands heavily in the mind of the aggrieved person, there shall be no difficulty for the Court to grant injunction, especially when it is found that particular person is in possession. The fact that the plaintiff is in possession of the property has not been disputed. On the other hand, the courts below rendered concurrent finding on such possession. It is a fit case wherein injunction ought to have been granted, by the First Appellate Court.”

16. For aforesaid settled law laid down by the Hon'ble High Court of Karnataka and available cogent oral and documentary evidence on record adduced by the plaintiff/PW-1 establish the plaintiffs' possession and cultivation of the suit schedule properties as on the date of suit and alleged interference of the defendant in peaceful possession and enjoyment of the suit schedule properties. Accordingly, point No.1 and 2 are the affirmative.

17. **Point No.3:-** The plaintiffs have filed the present suit against the defendant for the relief of permanent injunction seeking to restrain the defendant, his agents or anybody acting under him in peaceful possession and cultivation of suit schedule properties. In view of answer the point No.1 and 2 are

in the affirmative, plaintiffs are certainly entitle for relief of permanent injunction as prayed for. Accordingly, point No.3 is also answered in the affirmative.

18. **Point No.4**:- In the light of aforesaid reasons and discussions, this court has proceed to pass following:-

ORDER

The suit of the plaintiffs are hereby decreed with costs.

Consequently, the defendant, his agents or anybody acting under him are hereby restrained form interfere in peaceful possession and enjoyment of the respective suit schedule properties by the plaintiffs by way of perpetual injunction.

Draw decree accordingly.

(Dictated to Stenographer and got typed by him, once revised, corrected and later initialed by me and then pronounced by me in the open court on this the 20th day of December - 2021)

**(Sri. Janardhana S.K.)
Civil Judge & JMFC.,
Hangal.**

ANNEXURE**LIST OF WITNESSES EXAMINED ON BEHALF OF THE PLAINTIFFS:-**

PW-1 : Sri. Mallappa S/o Shivappa Doddamani

LIST OF DOCUMENTS MARKED ON BEHALF OF THE PLAINTIFFS:-

Ex.P1 : Record of rights in respect to Sy.No.7/8

Ex.P2 : Record of rights in respect to Sy.No7/B

Ex.P3 : Record of rights in respect to Sy.No.7/7

Ex.P4 to P6 : Village form No.24/A

Ex.P7 and 8 : Tax paid receipts.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENDANTS:-

----NIL-----

LIST OF DOCUMENTS MARKED ON BEHALF OF THE DEFENDANTS:-

----NIL-----

**(Sri. Janardhana S.K.)
Civil Judge & JMFC.,
Hangal.**

(Judgment pronounced in the
open court vide separate judgment)

ORDER

***Civil Judge & JMFC.,
Hangal.***