

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.275 OF 2015

DATED THIS THE 5th DAY OF SEPTEMBER – 2024

- Plaintiffs:** 1. Rathanavva W/o Fakkirappa Chataki
Age: 68 years, Occ: House hold work
R/o: Samasagi village, Tq: Hangal.
2. Mailareppa S/o Puttappa Gudikeri
Age: 42 years, Occ: Agriculturist
R/o: Baichavalli village, Tq: Hangal.
3. Sumakka @ Neelappa W/o Nagappa Ningoji
Age: 38 years, Occ: House hold work
R/o: Hangal town, Tq: Hangal.
4. Fakkirappa S/o Puttappa Gudikeri
Age: 41 years, Occ: Agriculturist
R/o: Baichavalli village, Tq: Hangal.
5. Chandravva W/o Nagappa Amati
Age: 36 years, Occ: House hold work
R/o: Hangal town, Tq: Hangal.

(By Sri.B.S.Dalawai – Adv.)

V/s.

- Defendants:** 1. Fakkiravva W/o Basappa Kudlanavar
Age: 55 years, Occ: Agriculturist
R/o: Baichavalli village, Tq: Hangal.

2. Govindappa S/o Bheemappa Araleshawara
Age: 53 years, Occ: Agriculturist
R/o: Baichavalli village, Tq: Hangal.
3. Mahadevappa S/o Bheemappa Araleshawara
Age: 53 years, Occ: Agriculturist
R/o: Baichavalli village, Tq: Hangal.
4. Parvatevva W/o Honnappa Talawar
Age: 25 years, Occ: House hold work
R/o: Halur village, Tq: Hangal.
5. Sahadevappa S/o Bheemappa Araleshawara
Age: 53 years, Occ: Agriculturist
R/o: Kendriya Vidyalaya, Shiradi Nagar,
Huballi, Dist: Dharward.
6. Arjun S/o Bheemappa Araleshawara
Age: 53 years, Occ: Agriculturist
R/o: Baichavalli village, Tq: Hangal.
7. Hanumanthappa S/o Bheemappa Araleshawara
Age: 53 years, Occ: Agriculturist
R/o: Baichavalli village, Tq: Hangal.

(Deft.No.1 to 6 By Sri. B.S.Akkivalli -Adv)
(Deft.No.7 Exparte)

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

ORDERS ON PRELIMINARY ISSUE
(ISSUE No.6)

The plaintiff No.1 to 5 have filed present suit against the defendant No.1 to 7 for the relief of fixation or demarcation of the boundaries of the suit schedule property in terms of registered sale deed dated 31-03-1908 by appointing court commissioner and consequential relief of permanent injunction to restrain the defendants to commit trespass over the suit schedule property and causing obstruction in peaceful possession and enjoyment thereof.

2. After the institution of the suit and in pursuance to suit summons, the defendant No.1 to 6 have appeared through their counsel and among them, the defendant No.2 has filed written statement. On the other hand, despite due service of suit summons, the defendant No.7 remained absent and consequently placed exparte.

3. The defendant No.2 in his written statement, in addition to denial of case of the plaintiff among the other grounds has contended that, the defendants never encroached upon any portion of the suit schedule property and as previous suit in O.S.No.192/2002 filed by propositus of the plaintiffs herein was decreed only in respect to relief of declaration and dismissed for the relief of recovery of

possession of alleged encroached portion of suit schedule property, it is claimed that suit is hit by principle of res-judicata. In addition, it is contended that present suit for permanent injunction without seeking recovery of possession of suit schedule property not maintainable and thereby further asserted that since suit is one for demarcation or fixing the boundaries of the suit schedule property, such a relief not maintainable under the law and consequently contended that this court has no jurisdiction to entertain the relief claimed in the suit. On said grounds, it is prayed to dismiss the suit threshold.

4. Based on rival pleadings, this court has framed following issues for determination :-

ISSUES

- 1. Whether the plaintiffs prove that they are in possession and enjoyment of the suit schedule property as on date of suit?***
- 2. Whether the plaintiffs prove the interference of the defendants in peaceful possession and enjoyment of the suit schedule property?***
- 3. Whether the plaintiffs are entitle for fixation of the boundary to the suit schedule property through court commissioner?***

- 4. *Whether the suit is barred by res-judicata?***
- 5. *Whether the suit is present form without seeking possession of suit schedule property is maintainable?***
- 6. *Whether this court has no jurisdiction to try the suit as contented in the para 8 of the written statement?***
- 7. *Whether plaintiffs are entitle for relief as sought for?***
- 8. *What order or decree?***

5. In pursuance to aforesaid issues framed by this court on 12-01-2022 and specific plea raised by the defendant regarding maintainability of the suit for want of jurisdiction of this court to entertain relief of fixation of boundaries of the suit schedule property, this court is pleased to treat and try issue No.6 as preliminary issue and accordingly, this court has proceed to try and decide said issue as preliminary issue as contemplated U/o.XIV Rule 2 of C.P.C.

6. Having regard to the bone of contentions of the both the sides and perused the materials available on records, I have answered issue No.6 in the '**negative**' for following;

: REASONS:

7. **Issue No.6:-** At out set, as indicated earlier, the plaintiffs have filed present suit for the relief of fixation and identification of boundaries of the suit schedule property in terms of registered sale deed dated 31-03-1908 by appointment of court commissioner and for consequential relief of permanent injunction to restrain the defendants to commit trespass over the suit schedule property and causing interference thereof. By claiming said reliefs, the plaintiffs have averred material facts in the plaint to the effect that originally suit schedule property was belonging to ownership of Sri.Fakkirappa S/o Fakkirappasaba and by virtue of registered sale deed in the year 1908, grand mother of the plaintiffs purchased the suit schedule property bearing VPC.No.57 measuring E-W:30 mola and S-N:150 mola situated Baichuvalli village and accordingly she was in possession and enjoyment of the said property till her lifetime. Upon her demise, the plaintiffs' father by virtue of succession continued in the possession and enjoyment of the suit schedule property and to that effect concerned Gram Panchayat assigned suit schedule property with VPC.No.57. It is further case of the plaintiffs that the property of the ancestor of the defendants by name Sri.Tirakappa S/o Bheemappa Araleshwara in VPC.No.64 situated abutting to

suit schedule property they were trying to encroach upon western portion of the suit schedule property for the construction of house and consequently the propositus of the plaintiff filed suit in O.S.No.192/2002 on the file of this court for the relief of declaration and consequential relief of recovery of possession of encroached suit schedule property and on merits said suit was partly decreed in respect to relief of declaration and dismissed in respect to relief of possession and said decree was also upheld by Hon'ble I Appellant Court and as the defendants being men of money and muscle power continued to interfere in peaceful possession and enjoyment of the suit schedule property which constrained them to file present suit for reliefs claimed.

8. As indicated earlier, the defendant No.2 in his written statement, among the other grounds by denying alleged attempt to trespass the suit schedule property and interference thereof, has specifically contended that this court has no jurisdiction or authority to entertain relief of fixation of the boundaries of the suit schedule property with the aid of court commissioner and upon said sole ground itself, it is prayed to dismiss the suit at earliest.

9. In the context of aforesaid material pleadings of facts asserted in the plaint and in the written statement of

defendant No.2, it is undisputed that apparently the plaintiffs in addition to claiming consequential relief of permanent injunction also sought for primary relief of demarcation or fixation of boundary of the suit schedule property in terms of registered sale deed dated 31-03-1908 and in accordance with measurement mentioned therein. The pure question of law involved at this juncture has raised by the defendant No.2 that very suit filed by the plaintiff for fixation of boundaries of the suit schedule property is not at all maintainable.

10. In fact, the law regarding jurisdiction of the civil court to entertain the suits of all the civil nature under section 9 of CPC is very much clear. Under section 9 of CPC, 1908, the civil court very much authority and jurisdiction to entertain the relief for fixation or demarcation of the boundaries of the suit schedule immovable property. The Hon'ble Supreme Court of India including various High Court through out the nation categorically laid down the settled principle of law that suit for demarcation of boundary of the suit schedule property is of dispute of civil nature and relief to that effect in the suit within ambit of section 9 of CPC is held to be very much maintainable.

11. In the context of said propositions of law, the counsel for the plaintiff has placed reliance on decision of

Hon'ble Apex Court reported in AIR 1987 SC 2137 between E.Achutan Nair V/s P.Narayanan Nair and another, wherein it is categorically held as follows:-

“Any one party may wish to have the limits of the area belonging to him demarcated so that he may either enclose the area to prevent trespass or to exercise acts of possession without encroaching in to neighbouring plot. If the other party on demand does not co-operate, a cause of action arises to have the limits of his property determine through a court. Again the property conveyed or allotted may have been described only with respect to neighbouring properties. Those properties may or may not have been limited in extent and shape to a survey field. In that case, a fixation of boundaries of those properties conveyed or allotted. If there is no co-operation in doing that may result in a dispute. These instances are only illustrative and not exhaustive. All the disputes are dispute of a civil nature and they can form the subject matter of a suit U/s.9 of CPC. There is no express or implied bar under any other law.”

12. On consideration of aforesaid dictum laid down by the Hon'ble Apex Court, it is quite crystal clear that civil suit for relief of demarcation or fixation or boundaries of the suit schedule immovable property is patently maintainable. Therefore, the contention of defendant No.2 in para 8 of the written statement that the present suit one for relief of demarcation and fixation and boundaries of the suit schedule property is not maintainable is can not accepted and holds no water. Therefore, suit filed by the plaintiffs for the relief of fixation of the boundaries of the suit schedule property and consequential relief of permanent injunction is perfectly maintainable U/s.9 of CPC of 1908 in view of aforesaid cited decision of Hon'ble Apex Court.

13. With abundant precaution, it is to be noted that all the defenses raised by the defendant No.2 in the written statement are kept open for agitation on merits of the case and merely because suit is held to be maintainable, that does not mean that the plaintiffs are in possession of the suit schedule property and proving the same is a subject matter of trail and evidence on merits of the case. Therefore, for forgoing reasons and discussions, issue No.6 (preliminary issue) is answered in the negative and consequently, this court has proceed to pass following:-

ORDER

Under section 9 R/w U/o. XIV Rule 2 of C.P.C., it is held that suit is very much maintainable and this court got subject matter of jurisdiction to entertain the suit.

Consequently, issue No.6 is answered in the negative.

(Dictated to Stenographer, directly typed by him on computer, once revised, corrected and later initialed by me and then pronounced by me in the open court on this the 5th day of September - 2024)

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