



**IN THE COURT OF THE CIVIL JUDGE & JMFC
AT HIREKERUR**

***Present: Shri. K.N.SHIVAKUMAR, B.Sc.,(Agri), L.L.M.,
Civil Judge and JMFC
HIREKERUR.***

Dated this the 20th day of December, 2021

O.S. 04/2016

Plaintiffs:

1. Veerappa S/o Gangappa Malavali
Dead, represented his by Lrs.
Plaintiff No.2 to 6
2. Chandrappa S/o Late Veerappa
Malavali, Aged about 50 years,
Occ: Agriculturist,
3. Smt. Shankravva W/o Chandrappa
Havanura, Aged about 35 years,
Occ: House hold work,
4. Malappa S/o Late Veerappa
Malavali, Aged about 50 years,
Occ: Teacher,

Plaintiff No.1 to 4 are R/o
Buradikatte Village, Hirekerur
Taluk, Haveri District.
5. Smt. Shashikala W/o Shankrappa
Madlura, Aged about 28 years,
Occ: House hold work, R/o
Kunetoppa Village, Soraba Taluk,
Shimoga District.



6. Smt. Revathi W/o Basavaraja
Talavar, Major, Occ: House hold
work, R/o: Kuncahal Village,
Hangal Taluk, Haveri District.

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

-Vs-

Defendant:-

1. Smt. Renukavva W/o Fakirappa
Talavara, Aged about 60 years,
2. Kiran S/o Fakirappa Talavara,
Aged about 15 years, Occ:
Student. (Since minor represented
by his natural guardian i.e.,
defendant No.1)
3. Satish S/o Fakirappa Talavara,
Aged about 22 years, Occ:
Student.
4. Meenakshi D/o Fakirappa
Talavara, Aged about 28 years,
Occ: House hold work,

All are R/o Balambidu Village,
Hirekerur Taluk, Haveri District.

(Rep. by Sri. R.B.K., Advocate)

Date of Institution of the Suit : 04-01-2016

Nature of the Suit : Declaration & Injunction



Date of Commencement of
recording of the evidence : 28-07-2017

Date on which the judgment was
pronounced : 20-12-2021

TOTAL DURATION	Years	Months	Days
	-05-	-11-	-16-

JUDGEMENT

1. This is a suit filed by the plaintiffs against the defendants for declaration & mandatory injunction.

2. The case of the plaintiffs in brief is as here under :

The case of the plaintiffs is that the plaintiff No.2 to 6 are the children of one late Smt.Gowramma W/o Veerappa Malavalli. The suit schedule property was purchased by said Gowramma on 29-01-2001. The husband of defendant No.1 and father of defendant No.2 to 4-Fakirappa Talavara had also purchased the site in plot No.34 in the same survey number R.S. No.32/2A. But the said Fakirappa has encroached the property i.e., plot No.33 of the plaintiffs to construct his house, wherein he has laid the foundation illegally. Though the mother of plaintiffs had filed a suit in O.S. No. 248/2001



against the said Fakirappa with regard to the alleged encroachment and obtained an order of injunction, said Fakirappa had laid the foundation by encroaching the property of plaintiffs. Hence the plaintiffs are constrained to file this suit.

3. Pursuant to suit summons, though the defendant No.1 to 4 represented through a counsel they did not chose to file any written statement.
4. The aforesaid pleadings have occasioned the following points for consideration :
 - 1) ***Whether the plaintiffs prove that, they are the absolute owners in possession of the suit schedule property?***
 - 2) ***Whether the plaintiffs prove the alleged encroachment by the defendants over the suit schedule property ?***
 - 3) ***Whether the plaintiffs are entitled for the relief of declaration & mandatory injunction ?***
 - 4) ***What order or Decree?***
5. To substantiate their case, the plaintiff No.1 got examined himself as PW1 and got marked 10 documents as Ex.P.1 to Ex.P.10.



6. Heard learned counsel for both the parties and perused the materials placed before the court.

7. My findings on the 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 the following:

REASONS

8. Point No.1:- In order to prove their case the plaintiffs examined the plaintiff No.1 as PW1 and got produced the judgment & decree passed in O.S. No.66/2002, the tax assessment extract of the suit property, the sale deed dated 29-01-2001 as per Ex.P1 to 4 respectively, they have also produced the plaint, written statement in O.S. No.66/2002 as per Ex.P5 to 10.

9. It is the specific case of the plaintiffs that the suit schedule property i.e., plot No.33 of Sy.No.32/2A was purchased by their mother late Gowramma W/o Veerappa Malavalli on 29-01-2001. The sale deed produced by the plaintiffs at Ex.P4 clearly supports the



case of the plaintiffs. Further it is alleged that the father of defendants himself had admitted that the plot No.33 was purchased by the mother of plaintiffs in O.S. No.66/2002 which was filed by him against the mother of plaintiffs and five other persons. In support of their case the plaintiffs got produced the judgment & decree passed in said O.S. No.66/2002 as per Ex.P1 & 2 and the plaint & written statement in said suit as per Ex.P5 to 10. On perusal of Ex.P1 & 2 and Ex.P5 to 10, it is evident that the father of defendants i.e., Fakirappa S/o Ramachandrappa Talavar had filed the said suit against the mother of plaintiffs and other five persons, wherein he himself categorically pleaded that he has purchased plot No.34 and the mother of plaintiffs had purchased plot No.33 in the said Sy.No.32/2A. Further it is specifically pleaded in the said suit by the father of defendants himself that by oversight and lack of boundaries, he has put up or constructed plinth in plot No.33 instead of plot No.34, more so the defendant No.4 in the said suit who had purchased the plot No.35 had constructed his house in plot No.34 of the father of the defendants. As such it is evident that the plot No.33 was



purchased by the mother of plaintiffs, whereas plot No.34 was purchased by the father of defendants. Thus it is crystal clear that the mother of plaintiffs and after her death the plaintiffs have become the absolute owners in possession of the plot No.33 i.e., the suit schedule property. The sale deed as per Ex.P4 & tax assessment extract at Ex.P3 categorically corroborate the title & possession of the plaintiffs over the suit schedule property. As the defendants did not chose to contest the suit, the oral testimony of Pw1 & documentary evidences at Ex.P1 to 10 stood unrebutted. Therefore it can be held that the plaintiffs are the absolute owners in possession of the suit schedule property. **Accordingly, this point is answered in the affirmative.**

10. Point No.2:- It is specifically alleged by the plaintiffs that the father of defendants had constructed plinth in the suit schedule property, though he had purchased the plot No.34 in the same survey number. The said fact was categorically admitted by the father of defendants in O.S. No.66/2002 which was filed by him against the mother of plaintiffs and five other



persons. It is further alleged by the plaintiffs that when the father of defendants had attempted to encroach their plot No.33, their mother Gowramma had filed a suit in O.S.No.248/2001 and obtained temporary injunction against the father of defendants, but the father of defendants in spite of having knowledge about the same had constructed plinth in plot No.33. The said fact was also admitted by the father of defendants in said O.S. No.66/2002. More over as the defendants have neither contested the suit nor filed any written statement, the said allegation and fact of encroachment stood un rebutted. Hence it can be held that the plaintiffs have proved that the father of defendants had encroached the suit schedule property and constructed plinth in the said property. **Accordingly, this point is answered in the Affirmative.**

11. Point No.3 :- The plaintiffs have sought for the relief of declaration to declare that they are the absolute owners in possession of the suit property. They have also sought for the relief of mandatory injunction against the defendants to remove the plinth constructed by the father of the defendants by



encroaching the suit property. As discussed and held herein above the plaintiffs are the absolute owners in possession of the suit schedule property. More so as discussed & held herein above the plaintiffs have proved that the father of defendants had constructed the plinth over the suit schedule property. If the said encroachment is not removed the plaintiffs may not enjoy their property peacefully and beneficially. As such it is necessary for the defendants to remove the alleged encroachment so as to enable the plaintiffs who are the true owners of said property to enjoy the same. Therefore the plaintiffs are entitled for the relief of mandatory injunction against the defendants. **Accordingly, this issue is answered in the Affirmative.**

12. Point No.4:- In view of the reasons assigned and the findings given in point No.1 to 3, this court proceeds to pass the following ;

ORDER

Suit of the plaintiffs is decreed with costs.



The plaintiffs are declared to be the absolute owners of the suit schedule property.

The defendants are directed to remove the alleged encroachment i.e., the plinth constructed by their father in the suit schedule property and hand over the vacant possession of the same to the plaintiffs.

In the event of failure on the part of defendants to remove the said encroachment, the plaintiffs are at liberty to remove the same in accordance with law and recover the cost of the removal from the defendants.

Draw decree accordingly.

(Dictated to Stenographer, transcribed by him, corrected by me and then pronounced it in open Court on this 20th day of December 2021.)

Sd/-
(Sri. K.N. Shivakumar)
Civil Judge & JMFC
HIREKERUR.

ANNEXURE

List of witnesses examined on behalf of plaintiff:

PW1 : Veerappa S/o Gangappa Malavali



PW2 : Shankravva W/o Chandrappa Havanura

List of documents marked on behalf of plaintiff :

Ex.P.1&2 : Notarized copy of Judgment & Decree of
O.S. 66/2002
Ex.P.3 : Tax assessment extract
Ex.P.4 : RTC
Ex.P.5 to10: Copy of amended plaint with respect to
O.S. 66/2002.

List of witnesses examined on behalf of defendants:

NIL

List of documents marked on behalf of defendants:

Nil

Sd/-
(Sri. K.N. Shivakumar)
Civil Judge & JMFC
HIREKERUR.



**Judgment pronounced in the
open court (*vide separate
judgment*)**

ORDER

Suit of the plaintiffs is decreed with costs.

The plaintiffs are declared to the absolute owners of the suit schedule property.

The defendants are directed to remove the alleged encroachment i.e., the plinth constructed by their father in the suit schedule property and hand over the vacant possession of the same to the plaintiffs.

In the event of failure on the part of defendants to remove the said encroachment, the plaintiffs are at liberty to remove the same in accordance with law and recover the cost of the removal from the defendants.

Draw decree accordingly.

**Sd/-
Civil Judge & JMFC., HKR**