

Govt. of Karnataka

TITLE SHEET IN SUITS

Form No.9
(Civil Title sheet
for judgment in
Suits K.P.91)

**IN THE COURT OF THE PRL. CIVIL JUDGE &
1ST ADDL. JMFC., RANEENNUR.**

Present : **Sri. P. Shivaraj**,
B.Com .LL.B.
Prl. Civil Judge & 1st Addl. JMFC.,
Ranebennur.

Dated this the 16th day of September- 2019

O.S.No.36/2017

- Plaintiffs :**
1. Honnappa S/o Gonibasappa Uppar
Age:78 Years,Occu:Agriculture,
R/o Tumminakatti, Tq.Ranebennur,
District:Haveri.
 2. Hanumanthappa S/o Gonibasappa Uppar
Age:66 Years,Occu:Agriculture,
R/o Tumminakatti, Tq.Ranebennur,
District:Haveri.
 3. Basavarajappa S/o Gonibasappa Uppar
Age:62 Years,Occu:Agriculture,
R/o Tumminakatti, Tq.Ranebennur,
District:Haveri.

(Pleader by Sri.S.V.Togarasi)

// Vs //

- Defendants :**
1. Nagamma W/o Hanumanthappa
Patil, Age:65 Years, Occu: Agriculture,
R/o Banashankari road, Tumminakatti,
Tq.Ranebennur, District:Haveri.
 2. Ravi S/o Hanumanthappa Patil,
Age:35 Years, Occu: Agriculture,
R/o Banashankari road, Tumminakatti,
Tq.Ranebennur, District:Haveri.

3. Prakash S/o Hanumanthappa Patil,
Age:32 Years,Occu:Agriculture,
R/o Banashankari road,Tumminakatti,
Tq.Ranebennur,District:Haveri.
4. Suresh S/o Lakshmanappa Patil,
Age:40 Years,Occu:Agriculture,
R/o Banashankari road, Tumminakatti,
Tq.Ranebennur,District:Haveri.
5. Raju S/o Lakshmanappa Patil,
Age:38 Years,Occu:Agriculture,
R/o Banashankari road,Tumminakatti,
Tq.Ranebennur,District:Haveri.
6. Ramesh S/o Lakshmanappa Patil,
Age:35 Years,Occu:Agriculture,
R/o Banashankari road,Tumminakatti,
Tq.Ranebennur,District:Haveri.

**(Pleader by Sri.S.S.Kabbinakantimath
for D 1 to 3)**

**(Pleader by Sri.K.N.Deshpande for
D4 to 6)**

Date of institution of suit	: 21.02.2017
Nature of suit	: For declaration and injunction
Date of commencement of recording of evidence	:01.03.2018
Date on which the Judgment pronounced	:16.09.2019
Total Duration	: Year/s Month/s Day/s ---02--- --06--- ---25---

**(P. Shivaraj)
Prl.C.J. & 1st Addl.JMFC.,
Ranebennur.**

J U D G M E N T

Plaintiffs have filed the suit for declaration of their title on the ground that, they have perfected their title over the suit schedule property by way of adverse possession, and for permanent injunction against the defendants.

2. Plaintiff's case is as follows:

One Ramanna S/o Bheemanna Uppar was the absolute owner in possession of the suit schedule property. Plaintiffs father Goneppa Uppar was cultivating the suit schedule property during his life time by mutating the revenue records of the suit schedule property in his name. After his death, plaintiffs succeeded the same till this date. Inasmuch, plaintiffs have derived their title over the suit schedule property by way of adverse possession. Defendants are not in possession of the suit schedule property and they are the strangers. Such being the case, defendants with an intention to dispossess the plaintiffs from the suit schedule property, they are trying to obstruct the plaintiffs possession and enjoyment over the suit schedule property. Inasmuch, plaintiffs have come up with this suit.

3. After institution of the suit, summons was served to the defendants, defendants appeared through their counsel, filed vakalath and their written statement.

6th defendant filed the written statement and the same is adopted by defendant No.4 & 5. The aforesaid defendants contended that, suit is not maintainable as the plaintiffs cannot seek the relief of declaration of their title, based on the concept of adverse possession. The aforesaid principle can be used by the defence as shield but plaintiff cannot make use of the aforesaid principle as sword.

They have denied the entire case of the plaintiffs in toto and they contended that, land in Sy.No.2/2 & 2/3 belongs to Uttaradimath. Defendants father Lakshmana Ramappa Patil was the cultivator of the aforesaid land and he had given application to the Land Tribunal, accordingly suitable order is passed in LRF(A) SR.24/75-76, dated:16.07.1977. Inasmuch, defendants father was in possession and enjoyment of the aforesaid land, after his death, defendants have succeeded the same and they are in possession and enjoyment of the aforesaid lands.

They contended that, 09-07 guntas of land is available in Re.Sy.No.2. In Phot Hissa proceedings, Re.Sy.No.2/1, 2/2 & 2/3 is allotted and necessary changes are effected in the revenue records as per the circular No.PMU10/2008-09, Dated:21.08.2008. Such being the case, defendants are in

peaceful possession and enjoyment of the suit schedule property and plaintiffs are the strangers to it and prays this court to dismiss the suit.

3rd defendant filed the written statement and the same is adopted by defendant No.1 & 2. The aforesaid defendants have supported the contention of defendant No.4 to 6 and prays this court to dismiss the suit.

4. On the basis of the above pleadings, I have framed the following :

ISSUES

1. ***Whether plaintiffs prove that, they have derived the title over the suit schedule property by way of adverse possession as alleged in the plaint?***
2. ***Whether the plaintiffs prove the alleged interference by the defendants as alleged in the plaint?***
3. ***Whether the 6th defendant proves that, suit schedule properties are granted to his father as contended at para No.10 of his written statement and they further proves they are the absolute owners in possession of the same?***

4. *Whether plaintiffs are entitled for the relief sought for?*

5. *What order or decree?*

5. 2nd Plaintiff examined himself as PW1 and examined two witnesses as PW2 & PW3, produced and marked 2 documents, which are at Ex.P1 & 2. On the other hand, 3rd defendant examined himself as DW1 and examined three witness as DW2 to 4, produced and marked 11 documents, which are at Ex.D1 to 8 & Ex.D9 to 18 are confronted marked through DW4.

6. I have heard arguments and perused the materials available on record. Learned senior counsel appearing for the defendants has filed written arguments. I have perused the same.

7. After carefully going through the materials available on record and taking into consideration the facts and circumstances of the case, my findings to the above issues are in the following:

Issue No.1 & 2	: In the Negative
Issue No.3	: In the affirmative
Issue No.4	: In the negative
Issue No.5	: As per final order, for the following:

REASONS

8. Issue No.1:-PW1 being the 2nd plaintiff, he reiterated the plaint averments in his examination in chief.

PW1 in his cross examination he categorically admitted that, he had not tendered any documents to show that, suit schedule property was granted to his father from the Land Tribunal. He simply denied the entire contention of the defendants when it is suggested to him. He has not chosen to give any explanations.

9. PW2 in his cross examination he clearly admitted that, he do not know the extent of the suit schedule property and further he clarified that, he do not know the extent of land in which plaintiffs are in possession. He also admitted that, he do not know the fact that, suit schedule property is granted to the plaintiffs father from the Land Tribunal.

10. Ex.P1 & 2 and Ex.D1 are the computerised RTCs wherein it is evident that, total extent of land in Re.Sy.No.2/1 of Tumminakatti village, Kuppelur Hobli measuring 08-35 guntas and there are other cultivators other than the parties to the suit in the aforesaid land. Ex.D10 to 14 are the hand written RTCs which are in the

name of Ramappa Bheemappa Uppar. Ex.D17 is the mutation register. The entries therein corroborates with the contention of defendants. Ex.D18 is the details of the resolution passed in the office of learned Assistant Commissioner, Haveri in respect of the Karnataka State Government resolution PMU Mojani 10/2008-09, dated: 21.08.2008. It reveals that, correction made in respect of Phot Hissa in Sy.No.2 of Tumminakatti village as per Karnataka State Government Circular No.PMU Mojani 10/2008-09, dated:21.08.2008. The entries in the aforesaid document corroborates/strengthens and probabalise the contentions of the defendants as contended in their written statement at Para No.10 on page No.3. of the written statement.

11. Ex.D5 is the certified copy of the plaint in O.S.N0.86/2018 filed by the plaintiffs against defendant No.2 to 6. The subject matter of the suit and subject matter in Ex.D5 are the one and the same. Ex.D7 & 8 are the certified copy of the orders passed on interim application U/o 39 Rule 1 & 2 of CPC in O.S.N0.86/2018 and are dismissed.

12. In the cross examination of DW1 to 4 nothing is elicited by the plaintiffs so as to establish their possession over the suit schedule property as on the date

of the suit and to prove the identity of the suit schedule property within the boundaries as put-forth by them. Plaintiffs have not suggested the ingredients of adverse possession to them. It is also true that, plaintiffs have not challenged the rectification made by the revenue authorities as per Ex.D18. Exfacie, plaintiffs have not whispered the source on which they have cited the boundaries to the suit schedule property. Defendants have rightly contended that, plaintiffs cannot seek the declaration of their title on the ground that, they have perfected the title by way of adverse possession, because concept of adverse possession is available to the defendants and it can be used as a shield, but not as a sword.

13. To substantiate the aforesaid principle, Learned Senior counsel for the defendants relied on Gurudwara Sahib Vs./- Gram Panchayat Village Sirthala and another reported in 2014 SAR (Civil) 33 of Hon'ble Supreme Court.

Dharampal (Dead) their Lrs. Vs./- Punjab Wakf Boarded & others reported in 2017 AIAR (Civil) 1033 of Hon'ble Supreme Court.

14. Exfacie, plaintiffs have not pleaded when and how they came in possession over the suit schedule property. Admittedly, plaintiffs are unaware of the real

owners of the land in Sy.No.2 of Tumminakatte village. It is not the case of the Plaintiffs that defendants are the owners of the suit schedule property and they are having the knowledge of the plaintiffs possession over the suit schedule property. Plaintiffs have failed to plead and established the fact that, when their adverse possession commences and the nature of the possession.

15. In a case where the plaintiff takes a plea of acquisition of title by adverse possession, has not only to plead the actual possession, but has also to plead the period and date from which he claims the possession. The plaintiff has further to plead and prove that his possession was continuous, exclusive and undisturbed to the knowledge that he is the real owner of the land. Plaintiff is required to demonstrate a hostile title and has to communicate his hostility to the real owner. In this case plaintiff has failed to plead and prove the aforesaid fact. **It is also well settled law that, adverse possession is always claimed against the owner of the property. Plea of adverse possession cannot be against the unknown owner.**

16. Concept of adverse possession can be set up as a defence and it cannot claim by the plaintiff as a sword. Before, a party can succeed in establishing title on the

basis of adverse possession, a plea to that effect must be specifically raised. It is a cardinal principle that, a person who claims adverse possession must plead to that effect and must show on what date he came into possession, what was the nature of the possession, whether the fact of his adverse possession was known to the real owner and what was the period of such adverse possession. In this case, exfacie plaintiffs have failed to comply the material aspects. Furthermore, they have failed to plead and established basic ingredients, to claim their title on the basis of adverse possession.

17. The authorities relied on by the learned senior counsel for the defendants wherein the concept of adverse possession and the usage of the aforesaid concept is categorically dealt with. With great respect to the aforesaid authorities and by considering the principles laid down therein and with the aforesaid discussion, I am of the opinion on the basis of the material available on record that, plaintiffs have failed to establish the identity of the suit schedule property, and further they failed to establish their adverse possession over the suit schedule property as on the date of the suit. There is no material on record to believe the version of the plaintiffs. Hence, with the aforesaid discussion based on the materials available on record, I am of the opinion that, plaintiffs

have failed to prove this issue, accordingly, **I am answering this issue in the negative.**

18. Issue No.2:- While answering issue No.1, it is discussed in detail and it is answered in the negative. The nature and manner of alleged interference is not specifically pleaded and proved. Inasmuch, the alleged unestablished interference by the defendants as alleged by the plaintiffs cannot be believed in all angles. Accordingly, **I am answering this issue in the negative.**

19. Issue No.3:- Defendants have categorically denied the entire case of the plaintiffs in toto and they contended that, land in Sy.No.2/2 & 2/3 belongs to Uttaradimath. Defendants father Lakshmana Ramappa Patil was the cultivator of the aforesaid land and he had given application to the Land Tribunal, accordingly suitable order was passed in LRF(A) SR.24/75-76, dated:16.07.1977. Inasmuch, defendants father was in possession and enjoyment of the aforesaid land, after his death, defendants have succeeded the same and they are in possession and enjoyment of the aforesaid lands.

20. Defendants contended that, 09-07 guntas of land is available in Re.Sy.No.2. In Phot Hissa proceedings, Re.Sy.No.2/1, 2/2 & 2/3 are allotted and necessary changes are effected in the revenue records as per the

circular No.PMU 10/2008-09, Dated:21.08.2008. Such being the case, defendants are in peaceful possession and enjoyment of the suit schedule property and plaintiffs are the strangers to it.

21. Ex.D10 to 14 are the hand written RTCs, Ex.D7 is the M.R. register. The entries in the aforesaid documents corroborates with the contention of the defendants. Ex.D18 is the details of the resolution passed in the office of learned Assistant Commissioner, Haveri in respect of the Karnataka State Government resolution PMU Mojani 10/2008-09, dated: 21.08.2008. It reveals that, correction made in respect of Phot Hissa in Sy.No.2 of Tumminakatti village as per Karnataka State Government Circular No.PMU Mojani 10/2008-09, dated:21.08.2008. Plaintiffs have not disputed nor denied the proceedings which are at Ex.D18.

22. In the cross examination of DW1 to 4 nothing is elicited to destroy their evidence tendered to substantiate their contention as contended in their written statement. Such being the case evidence tendered by the defendants probabalise their version. Inasmuch, proceedings as per Ex.D18 has taken place before the competent authority and it cannot be doubted and deserved to be believed. There is no material on record to disbelieve the contention

of the defendants and to believe the plaintiff's unestablished allegation. Hence, with the aforesaid discussion, **I am answering this issue in the affirmative.**

23. Issue No.4:- While answering issue No.1 to 3 it is discussed in detail and issue No.1 & 2 are answered in the negative and issue No.3 is answered in the affirmative.

Plaintiffs are claiming title by way of adverse possession, they failed to prove their possession over the suit schedule land adversely to the interest of the owner for more than statutory period, openly as a right and peaceably without any hindrance to the knowledge of the true owner and they failed to plead and prove the starting point of such adverse possession over the suit schedule property. The law is well settled in this regard that, mere long and uninterrupted possession cannot be hold to the adverse possession unless it is shown to be hostile against the interest of the true owner. Hence mere long and continuous possession by itself would not constitute adverse possession without "aninus Possidendi".

24. It is also true that, possession is not adverse when intention to hold adversely is conspicuously lacking. A person who claims title by adverse possession must show by clear and unequivocal evidence that his possession was adverse to the real owner. It is also true

that, in respect of adverse possession, it is settled law that, adverse possession has to be proved from year to year, and continuity cannot be presumed. It is also true that, a person pleading adverse possession that is plaintiff has no equities in his favour since he is trying to defeat the rights of true owner. It is for the plaintiff to clearly plead and establish all the facts necessary to establish his adverse possession. Concrete proof of open, hostile and continuous possession is required in order to substantiate their claim of perfection of title by adverse possession. The aforesaid facts are conspicuously missing and plaintiffs have failed to demonstrate and prove the aforesaid facts. Accordingly plaintiffs are not entitled for relief sought for. Hence, with the aforesaid discussion, **I am answering this issue in the negative.**

25. Issue No.5:-In view of the reasons and discussion made above, I proceed to pass the following:

ORDER

Suit of the plaintiffs is dismissed with cost.

Draw decree accordingly.

(Dictated to the /w, transcribed and computerized by her, then corrected, signed and pronounced by me in the open court on this 16th day of September **2019**).

(P. Shivaraj)
Prl.C.J. & 1st Addl.JMFC.,

Ranebennur

ANNEXURE

1. Witnesses examined on behalf of the Plaintiffs :

PW.1 : Hanumanthappa S/o Gonibasappa
Uppar
PW.2 : Gadigeppa S/o Mallanagouda
Kallimani
PW.3 : Ashok S/o Shivappa Banavar

2. Documents exhibited on behalf of the Plaintiffs :

Ex.P.1 & 2 : 2-RTC Extracts

3. Witnesses examined on behalf of the defendants:

DW.1 : Prakash S/o Hanumanthappa
Patil
DW.2 : Rudrappa S/o Basappa Kodagalla
DW.3 : Ashok S/o Mahadevappa
Gorannanavar
DW.4 : Ramesh S/o Lakshmana Patil

4. Documents exhibited on behalf of the defendants:

Ex.D1. : RTC extract
Ex.D2. : Mutation registers
Ex.D3 to 4. : RTC extracts
Ex.D5 : Certified copy of plaint in
O.S.N0.86/2018
Ex.D6 : Certified copy of Written statement
in O.S.N0.86/2018
Ex.D7 & 8 : Certified copy of order passed on
I.A.No.1 & 2 in O.S.N0.86/2018
Ex.D9 : RTC extract
Ex.D10 to 12. : 3-Hand written RTC extracts
Ex.D13 & 14 : 2- Hand written RTC extracts

- Ex.D15 : Certified copy of order passed by
Land Tribunal Ranebennur
- Ex.D16 : Survey Sketch
- Ex.D17 : Mutation register
- Ex.D18 : Proceedings passed by the Assistant
Commissioner, Haveri Division,
Haveri.

Prl.C.J. & 1st Addl. JMFC.,
Ranebennur..