

**TITLE SHEET FOR JUDGMENT IN SUITS****Govt. of Karnataka****[C.R.P.67]**

Form No.9 (Civil)

Title sheet for
Judgment in
Suits (R.P.91)**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, SAVANUR.**

Present : Sri. Shreyansh Doddamani,
B.Com., LL.B.,(spl)
Civil Judge and JMFC.,
Savanur.

ORIGINAL SUIT NO.12/2010**Dated this 2nd day of January 2023**

- Plaintiffs:1.** Ahammadsab S/o Khadarmiya Chopadar,
(Since Dead by LRS)
- 1a. Halimabi W/o Ahammadsab Chopadar,
Age : 70 years, Occ : Household work,
R/o : Savanur, Tq : Savanur, Dist : Haveri.
- 1b. Faridabanu W/o Basirahammad Killedar,
Age : 48 years, Occ : Household work,
R/o : Savanur, Tq : Savanur, Dist : Haveri.



- 1c. Shamasunnisa W/o Najeerahammad
Hakim, Age : 42 years, Occ : Household
work, R/o : Savanur, Tq : Savanur,
Dist : Haveri.
- 1d. Suleman S/o Ahammadsab Chopadar,
Age : 40 years, Occ : Coolie
R/o : Savanur, Tq : Savanur,
Dist : Haveri.
- 1e. Taherabanu W/o Munna Bammanahalli @
Ramane, Age : 38 years, Occ : Household
work, R/o : Savanur, Tq : Savanur,
Dist : Haveri.
- 1f. Shammi W/o Hasanmiya Makandar,
Age : 36 years, Occ : Household work,
R/o : Shiggaon, Dist : Haveri.
- 1g. Khalandar S/o Ahammadsab Chopadar,
Age : 34 years, Occ : Coolie
R/o : Savanur, Tq : Savanur,
Dist : Haveri.

(By Sri. P.R. Kalal, Advocate)

V/S

Defendants: 1. Shivappa S/o Totappa Bushetti,
(Since dead by LRS)



- 1a. Gangadhar S/o Shivappa Bushetti,
Age : 56 years, Occ : Business,
R/o : Savanur, Tq : Savanur,
Dist : Haveri.
- 1b. Shiddappa S/o Shivappa Bushetti,
Age : 54 years, Occ : Business,
R/o : Savanur, Tq : Savanur,
Dist : Haveri.
- 1c. Lalita W/o Basavaraj Bushetti,
Age : 46 years, Occ : Household work,
R/o : Savanur, Tq : Savanur,
Dist : Haveri.
- 1d. Sushila W/o Ashok Bushetti,
Age : 38 years, Occ : Household work,
R/o : Savanur, Tq : Savanur,
Dist : Haveri.
- 1e. Prasad S/o Ashok Bushetti,
Age : 19 years, Occ : Student,
R/o : Savanur, Tq : Savanur,
Dist : Haveri.
- 1f. Pooja D/o Ashok Bushetti,
Age : 22 years, Occ : Student,
R/o : Savanur, Tq : Savanur,
Dist : Haveri.



- 1g. Preeti D/o Ashok Bushetti,
Age : 24 years, Occ : Student,
R/o : Savanur, Tq : Savanur,
Dist : Haveri.
- 1h. Kastoori W/o Chandrashekhar Bushetti,
Age : 56 years, Occ : Household work,
R/o : Savanur, Tq : Savanur, Dist : Haveri.
- 1i. Nagaraj S/o Chandrashekhar Bushetti,
Age : 28 years, Occ : Business,
R/o : Savanur, Tq : Savanur, Dist : Haveri.
- 1j. Veeresh S/o Chandrashekhar Bushetti,
Age : 26 years, Occ : Business,
R/o : Savanur, Tq : Savanur, Dist : Haveri.
- 1k. Pavitra D/o Chandrashekhar Bushetti,
Age : 24 years, Occ : Business,
R/o : Savanur, Tq : Savanur, Dist : Haveri.
2. Mahammadhanif S/o Khajamodin Bateri,
Age : 40 years, Occ : Business,
R/o : Joshi Street, Near Mosque,
Savanur, Tq ; Savanur, Dist : Haveri.
3. Mahammadaashif S/o Khajamodin Bateri,
Age : 30 years, Occ : Business,
R/o : Joshi Street, Near Mosque,
Savanur, Tq ; Savanur, Dist : Haveri.



4. Abdulajeez S/o Khajamodin Bateri,
Age : 24 years, Occ : Business,
R/o : Joshi Street, Near Mosque,
Savanur, Tq ; Savanur, Dist : Haveri.

**(Sri. M.S.Mudagal, Advocate for D-1(a),
D-2 to 4 and D.1b to k Ex-parte)**

Date of institution of suit	11.01.2010		
Nature of the suit	Suit for Permanent injunction		
Date of commencement of recording of the evidence	04.06.2011		
Date on which the Judgment is pronounced	02.01.2023		
Total duration	Year/s	Month/s	Day/s
	12	11	22

**Civil Judge & JMFC,
Savanur.**

J U D G M E N T

Plaintiff filed this suit for seeking relief of permanent injunction in respect of suit property situated in Ward No.4, block No.5 measuring 30 X 45 in the limits of TMC



Savanur No.227/1 bounded by East: Government road, West: property of Yallappa Kalal, North: remaining property of plaintiff and South: government road, against defendants.

2. The averments of the plaint in brief is as under :-

The plaintiff asserted that he is the owner and possessor of the said suit property for more clarification it has been shown as EFCD in hand sketch map. The suit property is open space, wherein a public water tap is situated since 25 years, the public has been used the said water. The plaintiff has been in possession over the suit property since last 50 years. The defendants have not concerned to the suit schedule property in any manner. However, in order to grab the suit property the defendants by creating the falls documents have been trying to sold the suit property. On the basis of the created documents the defendants have been interfering in his possession over the suit property. Hence, he constrained to file this suit.



3. At the first time the plaintiff filed this suit against defendant No.1 only. The defendant appeared through VBT advocate and filed his written statement, thereafter, having heard both side this court dismissed the suit on 01/10/2013 being aggrieved by the judgment and decree. The plaintiff preferred RA No.17/2014 before the additional Senior Civil Judge JMFC Haveri. The Hon'ble Civil judge court set aside the judgment of this Court and remanded the suit for fresh adjudication in accordance with law after giving sufficient opportunity respective parties for additional evidence. When it was remanded, during the pendency the defendant No.1 transferred the suit property in favour of defendant No.2 to 4. Therefore, the plaintiff impleaded the defendant No.2 to 4 by filing IA under order 1 rule 10 of CPC.

4. The defendant No.1 in his written statement denied the plaint averments and contended that plaintiff mentioned the wrong boundaries to grab the property



belongs to the defendant No.1. Suit property was owned and possessed by defendant bearing TMC No.25 measuring 26 ft X 26ft situated in Ward No.4 block No.5. The plaintiff has not been in possession over the suit property. Hence, he prayed to dismiss the suit.

5. After impleading the defendant No.2 appeared through MSM advocate and filed written statement, the defendant No.3 and 4 adopted the written statement of defendant No.2 by filing the memo. In the written statement the defendant No.2 to 4 denied the entire plaint averments and contended that the plaintiff has shown the boundaries of property No.25 measuring 26ft X 26ft. They have purchased the suit property under registered sale deed for consideration of Rs.1,70,000/- from its previous owner Shivappa Totappa Bushetti i.e., defendant No.1. Regarding the TMC records the Hon'ble High Court of Karnataka in WP No.17776/1999 passed an order and



such resolution passed by TMC was confirmed, and purchased the suit property. The defendant No.2 to 4 have filed suit against TMC in OS No.300/2014 and same was decreed. It clears that defendant No.2 to 4 have been in possession over the suit property. Hence, they prayed to dismiss the suit.

6. On the basis of above pleadings and materials on record this Court has framed the following issues and additional issues.

ISSUES

1. Whether plaintiff proves that he is in actual and lawful possession and enjoyment of the suit property as on the date of this suit?
2. Whether plaintiff proves that the defendant is illegally obstructing in his possession and enjoyment of the suit property?



3. Whether the plaintiff is entitled for the relief as prayed for?
4. What order or decree?

ADDITIONAL ISSUE

1. Whether plaintiff proves that the sale deed dated : 29.01.2000 executed by defendant No.1 infavour of defendant No.2 to 4 is null and void and not binding to plaintiff?
7. Initially the plaintiff examined himself as PW.1 and got produced one document as Ex.P.1. When it was remanded for fresh consideration the plaintiff reported dead and his LRS brought on record. Then, the plaintiff No.1g examined as PW.2 and got marked Ex.P.2 to 12 documents. Initially the defendant No.1 examined his special power of attorney holder as DW.1 and got marked Ex.D.1 to 5 documents and in support of his evidence examined one witness as DW.2. Thereafter, when it was



remanded the defendant No.2 examined as DW.3 and got marked Ex.D.6 to 9 documents.

8. Heard both sides and perused the materials on record.

9. My answers to the above issues are as under: -

Issue No.1 :- In the Affirmative

Issue No.2 :- In the Affirmative

Issue No.3 :- In the Affirmative

Additional issue No.1 : In the Affirmative

Issue No.4 :- As per final order for the following.

//REASONS//

10. Issue No.1, 2 and Additional issue No.1:- Since these issues are inter connected with each other, in order to avoid repetition of facts and discussions they are taken up together for common discussion.



11. It is the specific case of the plaintiff that he has been in lawful possession over the suit schedule property bearing TMC No.227/1 measuring East-West 30 ft North-South 45 ft situated at ward No.4 block No.5, where in the public tap has been in existence since more than 25 years and it has been used by the public at large. The said suit property is open space and which is in possession of the plaintiff. But the plaintiff by creating some revenue records colluding with TMC authority caused interference to the use and enjoyment of the suit schedule property. During the pendency the defendant No.1 sold the property bearing TMC No.25, hence the defendant No.2 to 4 have impleaded. Due to the death of defendant No.1 his legal representatives brought on record as defendant No.1(a) to defendant No.(i).

12. *Per contra*, the defendant No.1 denied the possession of the plaintiff and also title of the plaintiffs over the suit schedule property and contended that the



plaintiff by showing the boundaries of defendants property bearing TMC No.25 measuring 26 ft X 26 ft filed this false suit. It is further contended that the TMC Savanur without giving any proper notice to the defendant deleted the name of defendant No.1 from the records. Therefore, the defendant No.1 has preferred writ petition before Hon'ble High Court of Karnataka in Writ Petition No.177/1999. The Hon'ble High Court directed to the TMC Savanur to enter the name of the defendant after due inquiry. Therefore, in pursuance of the said order the name of the defendant No.1 appeared in the TMC record.

13. The plaintiff initially in order to prove his case examined himself as PW.1 and got marked Ex.P.1 document only. The PW.1 filed affidavit evidence in lieu of examination in chief, wherein he reiterated the plaint averments. Ex.P1 is the extract of suit property issued by TMC which is standing in the name of plaintiff bearing TMC No.227/1.



14. When it was remanded, the plaintiff No.1(g) examined as PW.2. The PW.2 filed evidence affidavit in lieu of examination-in-chief, wherein he reiterated the plaint averments and got marked Ex.P.2 to 12 documents. Ex.P.2 is the certified copy of register of original suit in respect of OS No.94/1981, it discloses that one Umarasab Murdasab Bankapur filed suit OS No.94/4981 against Smt. Marembi W/o Marufsab Dowgi and 6 others for declaration of ownership in respect of TMC No.148(old) and TMC No.211 and 116/1 which was having house, backyard and front yard situated at ward No.4 and block No.5 of Savanur. Said suit was dismissed.

15. The plaintiff of the said case preferred RA No.45/1986 the said RA was allowed and Hon'ble Civil Judge Haveri set aside the judgment passed by this court in OS No.94/1981 and decreed the suit of the plaintiff. Thereby the plaintiff was declared as owner of the suit property.



Ex.P.3 is the certified copy of judgment in OS No.80/1965 on the file of Muncief and JMFC., Savanur. It discloses that one Umarasab S/o Mardansab Bankapur filed said suit against Mahaboobi Modinsab Hattiwale and others, for perpetual injunction restraining the defendants from interfering and obstructing in his possession of plaintiff over portion of the suit house and also for ejectment of defendant No.5 and 7 from remaining portion of suit house. In the said case Ahammadsab Chopadar, the plaintiff herein was the defendant and examined as DW.1. The said suit was dismissed. On careful perusal of the said judgment, I have not found any description of the suit property and TMC number of suit property.

Ex.P..4 is the certified copy of judgment in OS No.88/1998 against present plaintiff. It



discloses that Mahammad Rafiq, Hanifsab Churumuri and Ismail Hanifsab Churumuri have filed said suit for permanent injunction against the present plaintiff herein. Wherein the suit property was TMC No.220/1 (Old 206) situated at Ward No.4, Block No.5 bounded by East: public road, West: property of Arakasali, North: property of Umarasab Bankapur, South: public road and properties of Bushetti, Toshikari and Giddappa. It is further reveals that in the said property there are 3 parts (taks), out of which the first tak house measuring East-West 62 ft, North-South 15 ft, 2nd tak is backyard measuring East-West 62 ft North-South 35 ft and the 3rd tak is front yard measuring East-West 25 ft and north-South 52 ft. the said suit was dismissed. On careful perusal of the boundaries the property and present suit property, it appears that the present



suit property is part and parcel of the said property.

Ex.P.5 is the certified copy of Regular Second Appeal No.1297/1978 before the High Court of Karnataka Bengaluru, it discloses that the appeal preferred by the Umarsab Mardan Sab Bankapur on the judgment and decree passed by R.A. No.114/1974 and OS No.80/1965 is dismissed.

Ex.P.6 is the certified copy of judgment in RSA No.754/1990 on the file of Hon'ble High Court of Bengaluru, it discloses that Smt. Marembi W/o Marufsab Dougi and others preferred this RSA by challenging the judgment and decree dated 31.07.1990 passed by Civil Judge, Haveri in RA No.43/1986 passed by Muncife Savanur in OS No.94/1981 against Umarsab Mardansab Bankapur and another.



The said application allowed and suit was dismissed.

Ex.P.7 is the certified copy of RSA No.754/1990 before the Hon'ble High Court of Karnataka it discloses that Marembi Marufsab Dougi and others filed said appeal by challenging judgment and decree of Civil Judge Haveri in R.A. No.43/1986 dated : 31.07.1990 and OS No.94/1981 the said appeal was allowed and thereby suit of the plaintiff was dismissed.

Ex.P.8 is the certified copy of order of Assistant Commissioner Savanur in MUN/AP/SR/2/2008-09 it discloses that one Kalilahamad Umarsab Bankapur and others have preferred appeal against the President TMC, Chief Officer TMC and Ahammadsab Chopadar, it was filed in respect of TMC No.227 for cancel the resolution No.4(7) dated : 16.10.1999. The said



appeal was dismissed and the Assistant Commissioner Savanur directed to approach Civil Court to the parties.

Ex.P.9 is the certified copy of order sheet in OS No.66/2011 filed by one Shivappa S/o Totappa Bushetti against the plaintiff herein and another.

Ex.P.10 is the certified copy of Court Commissioner Report in LC No.80/1965, wherein it appears that Umarsab Mardansab Bankapur filed said suit against Mehaboobi Modinsab Hattiwale and other, wherein commissioner was appointed and said Commissioner filed report.

Ex.P.11 is the certified copy of Panch-ya-dast filed with commissioner report in OS No.80/1965. Ex.P.12 is the Certified copy of map in OS No.80/1965.



16. The plaintiff never pleaded about the above suits and regular appeal and regular second appeal in his plaint as well as evidence of PW.1 or PW.2. But during the arguments the Learned PRK advocate for plaintiffs argued that the above suits and appeals were concerned with present suit property. In the above suits and appeals the present suit property is also part and parcel of the suit property in the above suit and said appeal. In the above suits and appeals as per Ex.P.2 to 9 the present defendants were not parties. The said judgment and appeals not binding to the defendants of the present suit. But they can be consider to hold the existence of suit property.

17. On the other hand in order to disprove the plaintiffs case the defendant No.1 examined his power of attorney holder as DW.1. The DW.1 filed affidavit in lieu of examination in chief, wherein he reproduced the contents of written statement and produced Ex.D1 to 5. Ex.D.1 is



the special power of attorney deed. Ex.D.2 is the certified copy of Writ Petition No.17776/1999. It discloses that Hon'ble High Court of Karnataka remanded the matter to the 4th respondent therein, who is the Chairman Standing committee and Town Municipal counsel Savanur for fresh disposal after hearing the plaintiff in accordance with law. Ex.D.3 is the resolution passed by the TMC Savanur. Ex.D.4 and 5 are the certified copies of tax register, wherein the name of the defendant is appeared in column No.5.

18. Defendant no.1 in support of evidence of DW.1 examined one more witness as DW.2. The DW.2 in his chief examination affidavit deposed par with the evidence of DW.1.

19. The DW.1 in his cross-examination said that the suit property was their ancestral property but he didn't know when it was mutated in the name of his father i.e.,



defendant No.1. In the cross examination he admitted that his wife was member of TMC, Savanur in the year 1998 up to 5 years. The plaintiff's counsel suggested that in the said tenure of her wife got created the document in respect of TMC no.25 by showing the boundaries of the plaintiff's property. But the DW.2 denied the same. He admitted that the said resolution passed by the TMC to enter the name to the record of suit property was canceled by the TMC authority, when the public objected. Against the said order they have preferred Writ Petition before the High Court. In the said Writ Petition High Court ordered to the TMC that to conduct fresh enquiry and dispose after hearing both side. But till today the TMC not complied the order of High Court.

20. During the pendecny of the suit the defendant No.1 sold the property bearing TMC No.25 in favour of defendant No.2 to 10. The defendant Np.2 to 10 appeared filed written statement. The defendant No.2 examined as



DW.3. The DW.3 filed affidavit in lieu of examination in chief, wherein he reiterated the contents of written statement.

21. The DW.3 got marked 4 documents as Ex.D.6 to 9. Ex.D.6 is the certified copy of registered sale deed dated : 28.01.2014 which discloses that the defendant No.1 Shivappa S/o Totappa Bushetti sold the property bearing TMC No.25 measuring 26 ft X 26 ft which bounded by East :Government road, West: property of Mirajakar, North: property of Chopadar, South: Government road situated at Ward No.4 Block No.5 in favour of defendant No.2 to 4 for consideration of Rs.1,70,000/-. Ex.D.7 is the certified copy of tax register for the year 2014-15 in respect of TMC No.25. Ex.D.8 is the certified copy of judgment in OS No.300/2014 which discloses that the defendant No.2 after purchasing the said property had filed said suit against TMC., Savanur for permanent injunction. In the said case on behalf of defendants i.e.,



TMC Savanur Sri. PRM advocate appeared but not filed written statement. Therefore, the said suit was decreed. Ex.D.9 is the certified copy of decree in OS No.300/2014.

22. DW.3 in the cross examination clearly stated that he does not know his vendor defendant No.1 how acquired the said property. He stated that he purchased the said property by seen the order of High Court of Karnataka in WP No.37776/1999. He further said that he does not know what is the order of High Court in said WP. For more clarification his admission is extracted as under;

The defendant No.3 in his cross-examination admitted which reads thus at Page No.7 first line,

“ಭೂಶೆಟ್ಟಿಯವರ ಸೊಸೆ ಪುರಸಭೆ ಸದಸ್ಯ ಆಗುವ ಮೊದಲು ಆಸ್ತಿ
ನಂ.25 ಎಂಬುದು ಅಸ್ತಿತ್ವದಲ್ಲಿ ಇರಲಿಲ್ಲ ಎಂದರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ.
ಭೂಶೆಟ್ಟಿಯವರ ಸಾಕಷ್ಟು ದಾವೆಗಳು ಈ ನ್ಯಾಯಾಲಯದಲ್ಲಿ
ನಡೆದಿರುತ್ತವೆ ಎನ್ನುವುದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಸಿದ್ಧಲಿಂಗೇಶ್ವರ
ಟಾಕೀಜ್ ಎನ್ನುವುದು ಭೂಶೆಟ್ಟಿಯವರ ಆಸ್ತಿ ಎನ್ನುವುದು ಸರಿ.
ಸಿದ್ಧಲಿಂಗೇಶ್ವರ ಟಾಕೀಜ್ ಎನ್ನುವುದು ಬೂಶೆಟ್ಟಿಯವರ ಆಸ್ತಿ



ಎನ್ನುವುದು ಸರಿ. ರಸ್ತೆ ಪೂರ್ವಕ್ಕೆ ಮಾತ್ರ ಭೂಶೆಟ್ಟಿಯವರ ಆಸ್ತಿಗಳು ಇರುತ್ತವೆ, ರಸ್ತೆಯ ಪಶ್ಚಿಮಕ್ಕೆ ಯಾವುದೇ ಆಸ್ತಿ ಇರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಪಶ್ಚಿಮಕ್ಕೆ ನಾವು ಖರೀದಿಸಿದ ಆಸ್ತಿ ಇರುತ್ತದೆ. ನಾನು ಸದರಿ ದಾವಾ ಆಸ್ತಿಗೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಭೂಶೆಟ್ಟಿಯವರ ಹೆಸರಿನಲ್ಲಿರುವ ಕುರಿತು ಹಳೆಯ ದಾಖಲೆಗಳನ್ನು ನೋಡಿದ್ದೆ. ಹೈಕೋರ್ಟ್ ಆದೇಶ ಹೊರತುಪಡಿಸಿ ಭೂಶೆಟ್ಟಿಯವರ ಆಸ್ತಿ ಅಂತಾ ಹೇಳಲು ಬೇರೆ ಯಾವುದೇ ದಾಖಲೆಗಳನ್ನು ನಾನು ನೋಡಿದ್ದೆ. ಹೈಕೋರ್ಟ್ ಏನು ಆದೇಶ ಮಾಡಿರುತ್ತದೆ ಅಂತಾ ವಕೀಲರನ್ನು ಕೇಳಿ ತಿಳಿದುಕೊಂಡಿದ್ದೆ. ಭೂಶೆಟ್ಟಿಯವರಿಗೆ ದಾವಾ ಆಸ್ತಿಯನ್ನು ಮಾರಾಟ ಮಾಡಲು ಹಕ್ಕು ಇರಲಿಲ್ಲ. ಆದ್ದರಿಂದ ನನಗೂ ಸಹ ಸದರಿ ಆಸ್ತಿಯ ಮೇಲೆ ಯಾವುದೇ ಹಕ್ಕು ಇಲ್ಲ ಎಂದರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ, ಅವರು ಕೊಟ್ಟಿರುತ್ತಾರೆ ನಾನು ತೆಗೆದುಕೊಂಡಿದ್ದೇನೆ".

It clearly reveals that the defendant no.1 has sold the said property without any title and the defendant no.2 to 10 have purchased the suit property without verifying the title documents of defendant no.1.



23. On careful perusal of the above pleadings, documents and evidence it clearly reveals that there is serious dispute about the existence of TMC No.25 measuring 26 ft X 26ft. According to the plaintiff the defendant No.1 created the documents when his daughter in law was member of TMC. Before she elected as a member property of TMC No.25 has not been in existence. According to the defendant No.1 he acquired the said property by his ancestors. But there is no evidence at all to show that he acquired (defendant No.1) the said property from his ancestors except oral evidence. If at all it was in existence and defendant No.1 was inherited he would have produced documents. But defendant No.1 failed to produce title documents to show his ownership in respect of property TMC No.25. On careful perusal of the boundaries of the suit property TMC No.227/1 and the VPC No.25 as per Ex.D.6 are one and the same. It clearly reveals that the plaintiff and



defendants have been claiming ownership and possession of one property. Admittedly the said suit property is open space. It is bare injunction suit. In the injunction suit the Court cannot look into the title. In such suits the plaintiff has to prove his lawful possession over the suit property. When the suit property is open space it is difficult to prove physical and actual possession. In such circumstances it is settled law that the possession follows the title. In the present case the plaintiff contended that he acquired the suit property by inheritance. The plaintiff also not produced title documents. Ex.P.1 is not title document. But in respect of said property since 1965 there was a litigation between these plaintiff and Umarsab Bankapur and others and Mohammad Rafiq Churmuri and this plaintiff. In this regard the plaintiff have produced Ex.P.2 to 8 documents. Among which filed by one Mahammad Rafiq Hanifsab Churamuri Batti and another against Ahammadsab Chopadar i.e., plaintiff



herein, in respect of present suit property, said suit was dismissed. Even appeal have also dismissed. As per Ex.P.8 certified copy of order of Assistance Commissioner, Savanur in MUN/AP/SR/2/2008-09 dated : 22.06.2009 in respect of property TMC No.227/1 i.e., present suit property it appears that the plaintiff has been in possession over the suit property since 50 years.

24. On the other hand as already discussed the defendant No.1 failed to produce any title documents in respect of TMC No.25. Admittedly the defendant No.2 to 4 have purchased the said property bearing TMC No.25 during the pendency of this suit. Further the DW.3 in his cross-examination clearly admitted that he has not seen any documents. They purchased the said property based on the order of Hon'ble High Court of Karnataka in WP No.17776/1999. On careful perusal of the said order of Hon'ble High Court of Karnataka which was filed by challenging the cancellation of TMC order in respect of



property TMC No.25, the Hon'ble High Court of Karnataka remanded the matter to 4th respondent therein, who is the Chairman standing committee and Town Municiple counsel, Savanur for fresh disposal after hearing of the petitioner in accordance with law. But the TMC Savanur till today not complied the order of Hon'ble High Court of Karnataka. But without inquiry directly entered the name of defendant No.1 in the records of TMC. The said records are not title documents. Therefore the defendant No.2 to 4 are not owners of the said property. It clearly reveals that the said property is not in existence. It appears that the defendant No.1 created the records colluding with TMC officials by misusing the powers of his daughter-in-law during her membership tenure. Therefore, the registered sale deed executed by defendant No.1 in favour of defendant No.2 to 4 has not binding to the plaintiffs.



25. The learned advocate for defendant vehemently argued that the defendants have filed suit OS No.211/2015 against the TMC for permanent injunction and it was decreed. But in the said suit the plaintiff or legal heirs of plaintiff were not parties to the suit. Therefore, it was not binding to the plaintiffs. Apart from that in the said TMC even appeared not contested the matter, it clearly reveals that TMC colluded with the defendant No.2 to 4. Therefore on the basis of said judgment it cannot be held that the defendant No.2 to 4 are owners and possessors of the property bearing TMC No.25. The vendor of the defendant No.2 to 4 i.e., defendant No.1 executed sale deed Ex.D.6 without any right or interest therefore it become null and void.

26. In over all consideration it appears to the court that the suit property bearing Sy.No. 227/1 is owned and possessed by the plaintiffs as part and parcel of their



house and backyard. The suit property is front yard of the plaintiffs property bearing No.227/1. The alleged property defendant bearing TMC No.25 is not in existence. Therefore, the plaintiff proved that they are in possession over the suit property and also proved the interference of defendants. The plaintiffs also proved that the sale deed dated : 29.01.2014 executed by defendant No.1 in favour of defenant No.2 to 4 is not binding to the plaintiffs. Therefore this court has answered **issue No.1 and 2 and additional issue No.1 in the affirmative.**

27. Issue No.3 :- In view of the above discussion the plaintiff proved that they are in possession over the suit property as on the date of suit and also proved interference by the defendants. Hence, the plaintiffs are entitled for the relief of perpetual injunction. Hence, this court has answered **issue No.3 in the Affirmative.**



28. Issue No.4 :- In view of the above discussion, I proceed to pass the following;

ORDER

The suit of the plaintiff is hereby decreed with cost.

The defendants are hereby permanently restrained from interfering and obstructing into the possession of plaintiffs over the suit property TMC No.227/1.

Draw decree accordingly.

(Dictated to the stenographer, transcribed and typed by her, corrected, signed and then pronounced by me in the Open Court on this the 2nd day of January 2023)

(SRI. SHREYANSH DODDAMANI)
Civil Judge & JMFC.,
Savanur.

: ANNEXURE :

LIST OF WITNESS EXAMINED ON BEHALF OF PLAINTIFFS:

PW.1 : Ahammadsab S/o Khadarmiya Chopadar.

PW.2 : Khalandar S/o Ahammadsab Chopadar.

**LIST OF DOCUMENTS MARKED ON BEHALF OF PLAINTIFFS :**

- Ex.P.1 : Demand Tax Extract
Ex.P.2 : Certified Copy of register book of Original Suit
Ex.P.3 : Judgment passed in OS No.80/1965
Ex.P.4 : Judgment passed in OS No.88/1998
Ex.P.5 : Order passed in RSA No.1297/1978
Ex.P.6 : Judgment passed in RSA No.754/1990
Ex.P.7 : Decree passed in RSA No.754/1990
Ex.P.8 : M.U.N/AP/S.R.02/08-09
Ex.P.9 : Certified copy of order sheet in OS No.66/2011
Ex.P.10 : Commissioner Report
Ex.P.11 : Panchayadast.
Ex.P.12 : Hand Sketch Map.

LIST OF WITNESS EXAMINED ON BEHALF OF DEFENDANTS:

- DW.1 : Shiddalingappa S/o Shivappa Bushetti.
DW.2 : Giddappa S/o Kariyapa Karnool.
DW.3 : Mahammadhanif S/o Khajamodin Bateri.

LIST OF DOCUMENT MARKED ON BEHALF OF DEFENDANTS:

- Ex.D.1 : Special power of attorney
Ex.D.2 : Order passed in WP No.17776/1999
Ex.D.3 : Resolution passed by TMC Savanur



Ex.D.4 : Assessment list

Ex.D.5 : Demand tax register for the year 2009-2010

Ex.D.6 : Certified copy of Sale deed

Ex.D.7 : Demand tax register for the year 2014-15

Ex.D.8 : Judgment passed in OS No.300/2014

Ex.D.9 : Decree passed in OS No.300/2014

(SRI. SHREYANSH DODDAMANI)

Civil Judge & JMFC.,

Savanur.



