



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. MARUTHI. K,**
B.A., LL.B.
Civil Judge and JMFC,
SAVANUR.

ORIGINAL SUIT NO.188/2018

Dated this 18th day of January 2022

Plaintiff : Mallikarjunappa @ Mallikarjun S/o Shivappa
Goorannanavar, Age : 61 years,
Occ : Agriculture, R/o : Kalival
Tq : Savanur, Dist : Haveri.

(By Sri.V.B. Turakani, Advocate)

V/S

Defendants : **1.** Mallappa S/o Halappa Goorannanavar,
Age : 50 years, Occ : Agriculture,
R/o : Kalival, Tq : Savanur, Dist : Haveri.
2. Chanabasappa S/o Halappa Goorannanavar,
Age : 48 years, Occ : Agriculture,
R/o : Kalival, Tq : Savanur, Dist : Haveri.



- 3.** Manjunath @ Manjappa S/o Halappa
Goorannanavar, Age : 50 years,
Occ : Agriculture, R/o : Kalival,
Tq : Savanur, Dist : Haveri.
- 4.** Smt. Kasturevva W/o Mahadevappa Huded,
Age : 55 years, Occ : Household work,
R/o: Konchigeri, Tq : Shirahatti, Dist : Gadag.
- 5.** Smt. Channavva @ Channakka W/o
Chinnappa Soudatti, Age : 52 years,
Occ : Household work, C/o Chinnappa
Soudatti, Postal employee, R/o : Vidyagiri,
Daneshwar Nagar, Tq : Dharwad,
Dist : Dharwad.

(By Sri. S.A. Kamaraddi, Advocate)

Date of institution of suit	27.06.2018		
Nature of the suit	Suit for Possession		
Date of commencement of recording of the evidence	11.12.2020		
Date on which the Judgment is pronounced	18.01.2022		
Total duration	Year/s	Month/s	Day/s
	03	06	22

**Civil Judge & JMFC,
Savanur.**



J U D G M E N T

The plaintiff has filed this suit against the defendants for the relief of possession.

2. Brief facts of the plaintiffs case are as follows:-

The agricultural land bearing R.S. No.5/8 measuring 6 acres 00 guntas among that western 1 acre, 34 guntas land situated at Kalival village, Tq : Savanur, which is bounded as below is the suit property,

East - remaining land of plaintiff in R.S. No.5/8 ,
West - Defendants land,
North - Land of Tippanna S/o Baramappa Talawar
and Mallappa S/o Halappa Goorannanavar.
South - Government Halla

Plaintiff and defendants are the residents of Kalival village. After marriage defendant No.4 & 5 residing in their matrimonial house. Defendant No.1 to 3 are brothers. Defendant No.4 & 5 are sisters of defendant No.1 to 3. Plaintiff has landed property at Kalival village in Sy.No.5/8 measuring 6 acres 00 guntas partitioned among the brothers in the year 1992. As per partition mutation was accepted since partition plaintiff was in possession and enjoyment over the property fallen to his share. Earlier the property which



was fallen to the share of plaintiff was numbered as Sy.No.5/2B+4C+5A+5B, after partition it was re-numbered as Sy.No.5/8. Since 1992 till 2017 plaintiff was in possession and enjoyment over entire property fallen to his share. Thereafter, plaintiff applied to get fix the boundaries and to measure his property before Tahashildar Savanur. Then the land surveyor measured and fixed the boundaries of plaintiff property on 19.02.2018. Thereafter plaintiff obtained PT Sheet prepared by land surveyor on 06.04.2018 and came to know that the defendants encroached the property of plaintiff to the extent of 1 acre 34 guntas out of 6 acres in Sy.No.5/8. The defendants are the adjacent owner of Sy.No.5/7. The land surveyor has shown the measurement of suit property which was encroached by the defendants in PT Sheet in saffron colour. Then plaintiff approached the defendants on 01.05.2018 and orally requested to hand over the possession of suit property which was encroached by defendants. Defendants by one or the other reasons postponing the same. On 25.05.2018 plaintiff again approached the defendants and requested to hand over the possession of suit property but the defendants refused the request made by plaintiff. Plaintiff is the absolute owner of suit property and its remaining property. Defendants are in wrongful possession over the suit property. Hence, plaintiff constrained to file present suit for possession.



3. On service of suit summons defendant No.1 to 5 appeared through their counsel. Even after providing sufficient opportunity defendants have not chosen to file written statement. Hence, written statement of defendant No.1 to 5 is taken as not filed.

4. On the basis of plaint averments the points arose for my consideration are;

POINTS

1. Whether the plaintiff proves that he is absolute owner of 6 acres of land in Sy.No.5/8 situated at Kalival village?
2. Whether plaintiff proves the alleged encroachment caused by defendants as contended in plaint?
3. Whether plaintiff is entitled to the relief as prayed for?
4. What order or decree ?

5. In support of the case of the plaintiff, he has examined himself as PW.1 and he examined M.M. Maniyar the land surveyor as PW.2 and got marked documents at Ex.P.1 to 5 and closed his side of evidence. The defendants not chosen to lead oral evidence. Hence, their evidence is taken as nil.

6. Heard arguments of learned counsel for plaintiff. Defendants have not chosen to canvas arguments, hence their arguments is taken as nil. Perused the plaint averments, exhibits, evidence on record.



7. My answers to the above points are as hereunder:-

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 & 2:-** Since these issues are inter connected in order to avoid repetition of facts and evidence they are taken together for common consideration. The burden to prove point No.1 and 2 lies upon plaintiff as per Sec.101 & 103 of Indian Evidence Act, 1872. The relief sought by the plaintiff is governed U/Sec.6 of Specific Relief Act, 1963.

9. Plaintiff got examined himself as PW.1 who filed affidavit in lieu of examination in chief and reiterated entire averment of plaint. In order to prove the burden lies upon him, plaintiff has produced 5 documents which are got marked at Ex.P.1 to 5. Ex.P.1 is the RTC extract on its perusal it discloses that Survey No.5/8 of Kalival village measuring 6 acres is standing in the name of plaintiff vide MR No.T14/2016-2017 dated 27.08.2016 for the year 2017-18. Ex.P.2 is the certified copy of ME No.2440 dated : 13.03.1992. Ex.P.3 is the RTC extract of Sy.No.5/7



measuring 3 acres of land is standing in the name of defendant No.1 for the year 2017-2018. Ex.P.4 is the certified copy of Hissa form No.11 of Kalival village pertaining to suit property. Ex.P.5 is the certified copy PT sheet issued by land surveyor on 06.04.2018.

10. It is the version of plaintiff as made out from plaint averments, that he is the absolute owner of land in Sy.No.5/8 measuring 6 acres situated at Kalival village. Said property was fallen to the share of plaintiff in the year 1992 in the partition which was held between plaintiff and his brothers. Since partition till 2017 plaintiff was in possession of entire property fallen to his share. In the year 2018 he filed application before land surveyor seeking measurement and fixture of boundaries to his property then he came to know that defendants have encroached 1 acre 34 guntas of land out of 6 acres belongs to plaintiff. In order to substantiate his version he produced RTC extracts, mutation and PT sheet which are marked at Ex.P.1,2, 4 & 5. On perusal of Ex.P.2 it discloses that there was a partition in the year 1992 i.e., on 13.03.1992 wherein it discloses that plaintiff and his 5 brothers got orally partitioned there family properties by metes and bounds. In that partition the Sy. No.5/2B+4C+5A+5B measuring 6 acres of land was fallen to the share of plaintiff. On the basis of varadi submitted by



plaintiff and his brothers the property fallen to the share of plaintiff is mutated as Sy.No.5/8 measuring 6 acres as per Ex.P.1. Ex.P.4 discloses that the property in Sy.No.5/8 of Kalival village measures 6 acres. Ex.P.5 is the certified copy of PT Sheet issued by the land surveyor on 06.04.2018. On its perusal it discloses that on the basis of application the land surveyor visited the property of plaintiff situated at Kalival village and measured the same by fixing boundary stone on 19.02.2018. Further Ex.P.5 discloses that at the time of measurement, person in possession and adjacent owners were present. As per Ex.P.5 the owners of land in Sy.No.5/7 encroached the property of plaintiff in Sy.No.5/8 measuring 1 acres 34 guntas and the encroached property is shown by saffron colour in PT sheet. As per the report submitted by land surveyor the owners of adjacent land i.e., Sy.No.5/7 encroached the property of plaintiff as stated above. On perusal of Ex.P.3 it discloses that defendant No.1 is the owner of land in Sy.No.5/7 i.e., the defendants are the adjacent owners who encroached the property of plaintiff as per report submitted by land surveyor.

11. The plaintiff got himself examined as PW.1 and he got examined the land surveyor who measure the property of plaintiff as PW.2. Though plaintiff examined himself as PW.1 and witness as PW.2 the defendants not chosen to



cross examine these witnesses. Hence, evidence of PW.1 and 2 remained untested and unchallenged. Sec.6 of the Act, it is evident that in a suit to recover possession, the court may not go into the title of the plaintiffs. Sec.6 makes it clear that it is only where a person is dispossessed without his consent of immovable property, that by suit he can recover the possession thereof. Therefore, Sec.6 implies in order to succeed the immovable property in question must be in existence and it is only in such an event that the person dispossessed can seek recovery of possession

12. In the present suit on hand plaintiff proved his title and ownership with respect to suit property and encroachment made by defendants as per Ex.P.5. When plaintiff able to prove his ownership and encroachment with respect to suit property he is entitled to the relief sought for. The act of the defendants clearly goes to show that defendants encroached suit property as sated by land surveyor in Ex.P.5 and they are in wrongful possession over suit property. In view of reasonings this court held that plaintiff proved his title to the suit property and encroachment of suit property by the defendants to the extent of 1 acres 34 guntas in Sy.No.5/8. Accordingly, I answer point No.1 & 2 **in the Affirmative.**



13. Point No.3 :- When plaintiff proved point No.1 & 2, he is entitled to the relief as sought for in the suit. Accordingly, I answered point No.3 **in the Affirmative.**

14. Point No.4 :- In view of foregoing reasons, I proceed to pass the following;

ORDER

Suit filed by the plaintiff is hereby decreed with cost against the defendants.

The defendants are hereby directed to vacate suit property and hand over vacant possession of suit property to the extent of 1 acre 34 guntas in Sy.No.5/8 to the plaintiff within 30 days from today. Otherwise the plaintiff is at liberty to vacate the defendants from suit property and get possession in accordance with law at the cost of defendants.

Draw decree accordingly.

(Dictated to the stenographer on computer, corrected and initialed by me and then pronounced in the open court on this day of 18th January, 2022)

(Sri. Maruthi K.)
Civil Judge & JMFC.,
Savanur.



ANNEXURE

LIST OF WITNESSES EXAMINED FOR THE PLAINTIFF/S :

PW.1 : Mallikarjunappa @ Mallikarjun S/o Shivappa
Goorannanavar.

PW.2 : Mahmadvkabr S/o Modinsab Maniyar.

LIST OF DOCUMENTS MARKED FOR THE PLAINTIFF/S :

Ex.P.1 : Certified copy of RTC extract.
Ex.P.2 : Certified copy of Mutation Extract.
Ex.P.3 : Certified copy of RTC extract.
Ex.P.4 : Certified copy of Hissa Form No.11.
Ex.P.5 : C/C of PT Sheet.

LIST OF WITNESSES EXAMINED FOR THE DEFENDANT/S :

- NIL -

LIST OF DOCUMENTS MARKED FOR THE DEFENDANT/S :

- NIL -

**(Sri. Maruthi K.)
Civil Judge & JMFC.,
Savanur.**

* * * * *

