

KAHV700000762008



1

OS No.54/2008

IN THE COURT OF CIVIL JUDGE & JMFC.,
SHIGGAON

Present: Ashwinichandrakanth
B.Sc., LL.B.
Civil Judge and J.M.F.C.,
Shiggaon.

DATED 09th DAY OF JULY, 2024

ORIGINAL SUIT NO.54/2008

1. Chanaveeragouda S/o. Karigouda Patil and others.

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

.....PLAINTIFFS:

V/S

1. Channabasanagouda A/F Fakkiragouda Patil and others.

(Sri.N.N.P., Advocate for D1, 2, 4 and 5)

(Sri.M.G.H., Advocate for D3)

(Sri.R.M.H., Advocate for D6)

(Sri.K.S.P., Advocate for D7 to D10)

(Sri.D.B.C., Advocate for D11)

.... DEFENDANTS:

PARTIES TO THE IA NO.XXX

1. Chanaveeragouda S/o. Karigouda Patil and others.

.... Applicants/Plaintiffs

V/S

KAHV700000762008



2

OS No.54/2008

1. Channabasanagouda A/F Fakkiragouda Patil and others.

.... Opponents/Defendants

ORDER ON IA NO.XXX

The Plaintiff has filed application under Order 14 Rule 5 R/w Sec.151 of CPC., by seeking prayer to frame the additional issues as follows:

(i) Whether the Defendant No.3 proves that, he is the bonafide purchaser of the part of suit schedule property as contended in his written-statement?

(ii) Whether the Defendant No.1 and 2 proves that, the suit property bearing RS No.71 of Singapur village is absolutely owned and inherited by them from there predecessor in title has contended in Para No.3 of written-statement?

2. In the affidavit Plaintiff has sated that, Defendant No.1 and 2 stated that, they are the absolute owner of the suit schedule property and inherited by them from their

KAHV700000762008



predecessor in their written-statement of para No.3 Defendant No.3 stated that in his written-statement, he had purchased certain portion of the suit schedule property by this way he became the bona-fide purchaser. Hence, prays this court to frame additional issue. To prove the ownership of the Defendant No.1 to 3.

3. Per contra, the Defendant No.1 and 2 had filed their objection to IA No.30 stating that, on 26.05.2009 and 17.03.2011 this court has framed issues by considering the pleading and documents of both the parties for proper adjudication of this suit. Now the case is posted for final arguments of the suit at this juncture Plaintiff has filed this application. The suit is one for relief of Declaration and Injunction filed by the Plaintiff and the entire burden to prove their case is always on the Plaintiff only. Mere taking of defence by the Defendant No.1 and 2 in their written-statement will not help the Plaintiff. However, if at all the Defendants are shifted with the burden of proof they would

KAHV700000762008



be entitled to lead rebuttal evidence. Hence, this application is not maintainable by law and liable to be reject with costs.

4. Defendant No.3 filed objection to this IA stating that, the Plaintiff at last during the end of the proceedings filed an application under Order 23 Rule 1(3) of CPC., for withdrawal suit to permission to filed fresh suit on same cause of action. Moreover this court dismissed that application. Now the Plaintiffs only in order to cause unnecessary delay in the proceedings filed this false application. Hence, prays this court to dismiss this application with costs.

5. Heard, arguments from both sides, in view of the material placed before me and the rival contention raised by the parties. The following points have arisen for my consideration:



P O I N T S

1. Whether the additional issues sought to be framed by the Plaintiffs are necessary for adjudication of the matter in dispute?
2. What order ?

6. My answer to the above points are as under:

Point No.1 : In the Affirmative
Point No.2 : As per final order
for the following:

R E A S O N S

7. **Point No.1:** The Plaintiffs have filed this suit for Declaration and Permanent Injunction against the Defendants. The Defendants No.1 to 3 have filed written-statement after filing written-statement this court has framed issues. On perusal entire written-statement filed by the Defendants No.1 and 2 it reveals that, the Defendant No.1 and 2 have took contention in their written-statement that RS No.71 of Singapur village has described by the Plaintiffs in the plaint is absolutely owned, inherited by the

KAHV700000762008



Defendants form their predecessor in title. On perusal of the written-statement filed by the Defendant No.3 he has taken contention that, he has purchased certain portion in schedule property from Defendant No.2 hence he became the bonafide purchaser of the part of the suit schedule property. Such being the case to determine the right contention of those pleading is necessary for adjudication of the matter that the Defendants No.1 to 3 have alleged materials of proposition of fact. The written-statement prove the same additional issue is required to be adjudicate the matter. Hence, I answer Point No.1 in the affirmative.

8. **Point No.2:** For the aforesaid reasons, this court proceeds to pass the following:

ORDER

IA No.XXX filed by the Plaintiffs under Order 14 Rule 5 R/w Sec.151 of CPC., is hereby allowed with costs of Rs.500/-.

KAHV700000762008



7

OS No.54/2008

Additional Issue No.1 and 2 are framed as follows: (i) Whether the Defendant No.3 proves that, he is the bonafide purchaser of the part of suit schedule property as contended in his written-statement?

(ii) Whether the Defendant No.1 and 2 proves that, the suit property bearing RS No.71 of Singapur village is absolutely owned and inherited by them from there predecessor in title has contended in Para No.3 of written-statement?

(Dictated to the Stenographer, directly typed by her, corrected, and then pronounced by me in the open court on this the **09th day of July 2024**).

Sd/-
(Ashwinichandrakanth)
Civil Judge & JMFC,
Shiggaon.