

IN THE COURT OF THE CIVIL JUDGE CHITTAPUR

Present

Sri. Subhashchandra Rathod,

B.A., LL.M.

**Civil judge & J.M.F.C.,
Chittapur**

Dated on this the 13th day of August-2019

O. S. No. 98/2010

PLAINTIFF:

1. Bibanbee W/o Maheboobsab,
Age: 65 years, Occ: Agriculture
R/o Asar Mohalla Chittapur,
Tq: Chittapur.
2. Habeebee W/o Gousamat, Age: 67 years,
Occ: Household, R/o: Near Police Station,
Chittapur.
3. Allibaba S/o Allauddn, Age: 40 years,
Occ: Coolie, R/o: Near Railway Station, Wadi,
Tq: Chittapur.

(By Smt. M. V. L. Advocate)

V/s

DEFENDANT:

1. Mehaboob S/o Ahmedali sab,
Age: 60 years, Occ: Agrl.,
R/o: Diggaon, Now at present:
Sindanoor, Dist: Raichur.
(Since deceased through LRs)

- a) Zulekhabegum W/o Late
Mehaboob, Age: 55 years,
Occ: Household,
- b) Ahmed Pasha S/o Late
Mehaboob, Age: 38 years,
Occ: Coolie.

c) Munavar Begum D/o Late
Mehaboob, Age: 40 years,
Occ: Coolie.

d) Parveen Begum D/o Late
Mehaboob, Age: 34 years,
Occ: Household.

e) Jaffat Paxha S/o Late Mehaboob,
Age: 36 years, Occ: Coolie,
All are R/o: Babi Base, Sindnoor-
584128, Tq & Dist: Raichur.

2) Siddamma W/o Basavaraj
Nanjundi, Age: 35 years
Occ: Agrl., R/o: Diggaon
Tq: Chittapur., Dist: Gulburga.
**(Def. No.1 (a) to (e) by Sri. B. B. D.
& Def. No. 2 by Smt. J. M. B. Advocate)**

Date of institution	: 29-11-2010
Nature of the Suit	: Declaration, recovery of possession.
Date of commencement of recording evidence	: 11-11-2013
Date of closing of evidence	: 23-08-2017
Judgment pronounced	: 13-08-2019
Total duration	: Years Months Days 08 08 15

Civil Judge, Chittapur

J U D G M E N T

This is a suit instituted by the plaintiffs against the defendants for the relief of declaration, recovery of possession.

2. In brief the facts of the case are as follows;

It is pleaded by the plaintiffs that, the suit property is land bearing Sy. No. 894/3 measuring 2 acres 34 guntas situated at Diggaon village, bounded by to east-Sy.No.872 and 873, West-Sy.No.899, North-894/2 and South -Sy.No.894/4. That the plaintiff No.1 and 2 are the cousin sisters of defendant No.1 and plaintiff No.3 is the son of sisster of plaintiff No.1 and 2. One Hussainsab had two sons by name Lalahmmed and Ahmmedali. Lalahmmed died in the year 1981 leaving behind only five daughters. Two daughters died issue-less and one daughter died leaving behind one son i.e., plaintiff No.3. That the another son of Hussainsab by name Ahmmedali died before Lalahmmed leaving behind his wife and defendant No.1. The wife by name Maheboobee also died, hence defendant No.1 is the only successor of deceased Ahammedali. Further it is pleaded that father of the plaintiff No.2 and father of defendant No.1 were real brothers. Father of the plaintiff Nod.1 and 2 by name Lalahmmed was the owner of the suit land and father

of defendant No.1 was the owner and possessor of the land bearing Sy.No.894/2 measuring 2 acres 30 guntas, which is situated within the limits of Diggaon village. These properties are fallen to their respective share in partition between themselves long back. After death of Lalahmmed the suit land was cultivated by the daughters of Lalahmmed. The defendant No.1 was cultivating land fallen to his father. The relationship between the plaintiff and defendants are cordial and so the plaintiffs having full faith on the defendant No.1 he being their brother were cultivating the suit land through the defendant No.1 was looking after the suit land and giving the yield to the plaintiffs to every year. Further it is pleaded that the defendant No.1 being the back of the plaintiff and without their knowledge taking the advantage of old age of plaintiff No.1 and 2 and their illiteracy, while getting motivating the land Sy.No.894/2 was standing in the name of mother have also got mutated the suit land belonging to the father of the plaintiff No.1 and 2 in his name vide mutation dated: 21-07-2008. And sold the suit land along with his own land to defendant No.2 through registered sale deed No.156/2010-11 dated: 25-05-2009. In the month may-2010 when the plaintiff asked the defendant No.1 give the crops after

deducting the expenses for cultivation the defendant No.1 went on postponing the matter on one or other reasons. Thereafter the plaintiff got the ROR and came to know about the selling of suit land along with land of defendant No.1 to defendant No.2 and also came to know that the defendant No.1 had handed over the possession of the suit land to the defendant No.2. Hence this suit for declaration, recovery of possession.

3. After service of suit summons the defendants appeared through their counsel and filed their written statement. During the pendency of the suit the defendant No.1 died and his LRs are brought on record.

4. In the written statement the defendant No.1 has admitted the relationship of the parties to the suit. Also admitted regarding partition between his father and father of the plaintiff No.2. Further it is also admitted that the suit property was earlier standing in the name of father of plaintiff No.1 and 2. Further it is also admitted that father of plaintiff No.1 and 2 and his father died as pleaded by the plaintiff, but it is denied that the defendant No.1 was cultivating the suit land on crop share basis and giving yield to the plaintiffs per year as pleaded by the

plaintiffs. It is contended that during the life time of the father of the plaintiff No.1 and 2 orally gifted the suit property in favour of defendant No.1 and since then the defendant No.1 was in possession and enjoyment of the suit property and property bearing Sy. No. 984/2. Further it is contended that after mutation of his name in the records of the suit and non-suited property, he sold both properties in favour of defendant No.2 by registered sale deed. Hence prays to dismiss the suit of the plaintiffs.

5. The defendant No.2 in her written statement denied the entire case of the plaintiffs including the relationship of the plaintiffs with defendant No.1 and also denied that the father of the plaintiff No.1 and 2 and father of defendant No.1 are the brothers. It is also denied that, the plaintiff No.1 and 2, Lalahmmed S/o Hussainsab was the owner and possessor of the suit land Sy. No. 894/3 measuring 2 acres 34 guntas and father of the defendant No.1 Ahmmedali was the owner of the land bearing Sy. No. 894/2 measuring 2 acres 30 guntas. It is denied that after death of father of plaintiff No.1 and 2, the plaintiffs along with defendant No.1 were cultivating the suit property and the defendant No.1 without knowledge to the plaintiff No.1 and 2 got mutated his name in the records of suit

land and sold the suit land along with other land to the defendant No.2 without having any right to sell the suit property. It is also denied that in the Month of May-2010 the plaintiff No.1 and 2 asked the defendant No.1 to give the crop for the year-2010. Further denied that after obtaining the ROR the plaintiffs came to know that the defendant No.1 illegally sold the suit land to the defendant No.2 and also handed over the possession. It is contended by the defendant No.2 that, the defendant No.2 is the bonafied purchaser of land Sy. No. 894/2 and 894/3 and since then she is in possession and enjoyment of the both lands without anybodies interference. Hence prays to dismiss the suit of the plaintiffs.

6. On the basis of the pleadings and material on record, some issues have been framed by my predecessor in office. Thereafter issue No. 1 is re-casted and some additional issues are framed which are as following;

ISSUES

- 1) Whether the plaintiffs prove that, they are owner of the suit property bearing Sy. No. 894/3 measuring 2 acres 34 guntas of Diggaon village in Chittaplur taluka ? (Re-casted issue)

- 2) Whether the plaintiffs further prove that defendant No.1 without the knowledge of plaintiffs behind the back got entered his name to suit property and illegally sold out the suit property to defendant No.2?
- 3) Whether the defendant No.2 prove that she is bonafied purchaser of the suit property for valuable consideration?
- 4) Whether the plaintiffs are entitled for the reliefs sought for?
- 5) What order or decree?

ADDL. ISSUES

- 1) Whether the defendant No.1 prove that the father of plaintiff by name Lalahmmed has orally gifted the suit property in his favour as pleaded in written statement in para No.6?
2. Whether the plaintiffs prove that the sale deed document No.960/2009-10 dated 25-05-2009 executed by defendant no.1 in favour of defendant No.2 is null and void and not binding on the plaintiffs?
3. Whether the plaintiffs are entitled for vacant possession of the suit land?
4. Whether the plaintiffs are entitled for mense profit of Rs.20,000/- per year from the date of filing the suit till the date of recovery of possession of the suit property?

7. To substantiate the case of the plaintiffs, the plaintiff No.1 herself examined as Pw-1 and relied on documents at Ex.P-1 to 33 and also examined one witness as Pw-2. On the other hand the defendant No.2 is examined as DW-1 and got marked Ex. D-1 to 10 and also examined one witness as DW-2.

8. Heard counsel for the plaintiffs and defendant No.1. Even after giving sufficient opportunity to defendant No.2 neither the counsel for the defendant No.2 nor the defendant No. 2 represented the case. Hence, argument of defendant No.2 is taken as nil. Perused the material on record.

8. My findings on the above issues are as follows:

Issue No.1 : In the affirmative

Issue No.2 : In the affirmative

Issue No.3 : In the negative

Issue No.4 : In the affirmative

Addl. Issue No.1 : In the negative.

Addl. Issue No.2 : In the affirmative.

Addl. Issue No.3 : In the affirmative

Addl. Issue No.4 : In the negative.

Issue No.5 : As per final order, for the following;

R E A S O N S

9. **Issue No.1, 2 & Addl. Issue No.1:** These issues are interconnected to each other. Hence I have taken up these issues together for common discussion to avoid the repetition of facts, evidence and reasoning on these issues.
10. The plaintiffs to substantiate their case relied on oral evidence of Pw-1 and 2 and documentary evidence at Ex.P-1 to 33. The plaintiff No.1 filed her examination in chief by way of affidavit and reiterated the facts stated in the plaint. Pw-2 also filed examination in chief and deposed in support of plaintiffs. The defendants have not cross examined Pw-1 and 2 even after giving sufficient opportunity. Hence cross of Pw-1 and 2 taken as nil. Ex.P-1 to 15 and 20 to 32 are the RORs of the suit property. Ex.P-33 is the SPA executed by the plaintiff No.1 to Pw-2. Ex.P.1 to 14 which are the ROR of Sy. No. 894/3 (suit land) for the year 1973 to 2007-08, goes to show that, the till 2007-08 the suit land was standing in the name of father of plaintiff No.1. This fact is also admitted by the defendant No.1 and also Dw-2 in his cross examination has admitted the relationship of

the parties to the suit and also the father of the plaintiff No.1 and 2 was the owner of the suit property.

11. The contention of the defendant No.1 is that, the father of the plaintiff No.1 and 2 orally gifted the suit property to the defendant No.1 and by virtue of gift he became the owner and possessor of the suit property. But the defendant No.1 has not led any evidence to prove the fact that, the father of the plaintiff No.1 and 2 has orally gifted the suit property to him. Ex.P-15/ROR of the suit land which is for the year 2008-09 shows that, the name of the defendant No.1 has been mutated in the ROR of the suit property as "Pitrarjit" and not by virtue of gift as contended by the defendant No.1. This fact clearly goes to show that, the defendant No.1 without knowledge to the plaintiffs got mutated his name in the ROR of the suit property. Further the said mutation is illegal and it will not create any title or interest in favour of defendant No.1. The oral and documentary evidence of the plaintiffs remained unchallenged by the defendants. The material on record goes to show that, after death of the father of plaintiff No.1 and 2, the plaintiffs succeeds the suit property and gets their fixed share as per their personal law and became owner of their respective share in the suit property.

Therefore issue No.1 and 2 are answered in the affirmative and Addl. issue No.1 is answered in the negative.

12. **Issue No.3 Addl. Issue No. 2:** The plaintiffs have pleaded that, the sale deed executed by the defendant No.1 in favour of defendant No.2 is null and void and not binding on them. On the other hand the defendant No. 2 contended that, she is bona-fide purchaser of the suit property from the defendant No.1. The defendant denied entire case of the plaintiff including the relationship between the plaintiffs and defendant No.1. To prove that, the defendant No.2 is bona fide purchaser, the defendant No.2 relied on documents at Ex.D-1 which is the Sale deed of suit property and another property executed by defendant No.1 in favour of defendant No.2, Ex. D. 2 is the mutation order, Ex.D -3 is the Akarbandh Utar and Ex.D.4 to 10 are the RORs of Sy. No. 894, which shows that, after purchase of the suit property by the defendant No.2 her name is mutated in the ROR of the suit property and continued the same. The defendant No.2 also examined one witness as Dw-2. During cross examination Dw-1 deposed that, she has not seen previous documents of the suit property before entering into sale transaction.

She has seen only ROR of the suit property at the time of execution of sale deed, she pleaded her ignorance regarding relationship of the plaintiffs and defendant No.1. Further Dw-1 also deposed that she has not enquired regarding entry of name of Lalahemad/defendant No.1 in the ROR. Further neither the defendant No.1 nor the defendant No.2 cross examined the Pw-1 and 2. Hence the evidence of Pw-1 and 2 remained unchallenged.

13. Dw-2 in his cross examination has admitted and deposed that, he has seen Ahamedali S/o Husensab, Husensad had two sons by name Lalahemad and Ahemadali. Earlier the suit property was standing in the name of Lalahemad. The defendant No.1 also not disputed that, the father of the plaintiff No.1 and 2 was the owner of the suit property. The material on record goes to show that, the defendant No.2 has not made any enquiry and also not seen the documents of the suit property to ascertain how the suit property came to defendant No.1. Therefore, after considering entire material on record this court is of the opinion that, there is no evidence on record to hold that, the defendant No.1 became owner of the suit property by virtue of oral gift

and the defendant No.2 is the bona fide purchaser of the suit property. Therefore the sale deed executed by the defendant No.1 in favour of defendant No.2 doc. No.960/2009-10 dated 25-05-2009 is illegal and not binding on the plaintiffs in respect of suit property. Hence issue No. 3 is answered in the negative and Addl. issue No. 2 is answered in the affirmative.

14. **Issue No.4 Addl. Issue No. 3 and 4:** In this case the plaintiffs are seeking the relief of declaration, possession and also sought for mense profits. While discussing above issues, this court came to conclusion that, the sale deed executed by the defendant No.1 in favour of defendant No.2 is illegal and the plaintiffs are owners of the suit property, therefore the plaintiffs are entitle for the relief of possession also. But in respect of mense profits is concerned, the plaintiff has to prove the illegal possession of the suit property by the defendants. In this case the possession of the defendant No.1 or 2 is not illegal. Because the defendant No.1 came into possession of the suit property by virtue of mutation and thereafter defendant No.2 came into possession of the suit property by virtue of registered sale deed executed by the defendant No.1 and since then the defendant No.2

is in possession of the same. Therefore the possession of the defendant No.2 will not amount illegal, Hence the plaintiffs are entitle only for the relief of declaration and possession and not for the relief of mense profits. Accordingly issue No. 4 and Addl. issue No.3 are answered in the affirmative and Addl. issue No.4 is answered in the negative.

15. **Issue No.5:** Considering the facts and circumstances of the case, there is no order as to costs. In view of reasoning and findings on issue No. 1 to 5, I proceed to pass the following:

ORDER

The suit of the plaintiffs is hereby decreed in part.

It is hereby declared that the plaintiffs are owner of the suit property.

It is hereby declared that, the sale deed document bearing No.960/2009-10 dated: 25-05-2009 executed by defendant No.1 in favour of defendant No.2 in respect of suit property is null and void and not binding on the plaintiffs.

The defendant No.2 is hereby directed to hand over the vacant possession of the suit land to the plaintiffs within three months from the date of judgment.

No order as to costs.

Draw decree accordingly.

(Dictated to the stenographer directly on computer, after typing, corrected, signed and then pronounced by me in the open Court on 13th day of August - 2019)

(Subhashchandra Rathod)
Civil Judge, Chittapur

ANNEXURE

List of Witnesses examined for the Plaintiff

Pw-1 : Bibanbeen W/o Mehaboobsab.

Pw-2 : Mohd. Mashak S/o Shaik Mehaboob.

List of Witnesses examined for the Defendants:-

DW-1 : Smt. Siddamma D/o Basawaraj Nanjundi.

DW-2 : Sadanand S/o Anandraya Siramani.

List of Documents exhibited for the Plaintiff:-

Ex.P-1 to 16 : RORs of the suit land
Ex.P-17 : Certified copy of sale deed
Ex.P.18 & 19: Mutation register extract.
Ex.P.20 to 32: RORs.
Ex.P.33 : Special Power of Attorney.

List of Documents exhibited for the Defendants: -

Ex.D.1: Sale deed of suit property
Ex.D.2: Mutation order
Ex.D-3 : Akarbandh Utar.
Ex.D.4 to 10 RORs (07).

Civil Judge, Chittapur