

**IN THE COURT OF CIVIL JUDGE AND J.M.F.C,
JEWARGI.**

Present: **Sri. SHIVARAJ.V. SIDDESHWAR.**

B.Sc., B.Ed. LL.B.(spl).
Civil Judge and JMFC, Jewargi.

DATED ON THE 18th DAY OF FEBRUARY-2020.

ORIGINAL SUIT No.165/2014

- 1) Mallappa S/o Bailappa Heroor (Pujari),
Age: 70 years, Occ: Agriculture.
- 2) Siddappa S/o Mallappa Heroor (Pujari),
Age: 38 years, Occ: Agriculture.
- 3) Shekeppa S/o Mallappa Heroor (Pujari),
Age: 36 years, Occ: Agriculture.
- 4) Sharnappa S/o Mallappa Heroor (Pujari),
Age: 32 years, Occ: Agriculture.
All R/o Halagadla, Tq: Jewargi,
Dist: Kalaburagi.

Plaintiffs

V/S.

- 1) Nagappa S/o Somalingappa Kadkal,
Age 50 Yrs, Occ: Agriculture.
- 2) Yenkappa S/o Somalingappa Kadkal,
Age 40 Yrs, Occ: Agriculture.
- 3) Yellappa S/o Sidramappa Yeshagar,
Age 40 Yrs, Occ: Agriculture.
All R/o Halagadla, Tq: Jewargi,
Dist: Kalaburagi.

Defendants

Sri.B.Basanna, Adv. for plaintiffs.
Sri.J.V.Hatti, Adv. for defendant No.1.
Defendants No.2 and 3 exparte.

Date of institution of the suit : 22.09.2014.

Nature of suit : Declaration, Mandatory and
Perpetual Injunction.

Date of commencement of recording : 12.08.2015
of evidence.

Judgment pronounced on : 18.02.2020

Total Duration : Years Months Days
05 04 27

Civil Judge and JMFC,
Jewargi.

J U D G M E N T

Plaintiffs filed this suit against the defendants for the relief of declaration, consequential relief of perpetual and mandatory injunction.

2. Subject matter of the suit property is as follows;

Road running from North to South towards the Eastern side of house bearing Panchayath No.3-207 measuring 90 feet East to West and 100 feet North to South with the boundaries towards the East: Main road, towards the West: Open space of Guranna Pujari Ryavanoor, towards the North: Open space of Malkappa Pujrari and towards the South: Ijeri road situated at Halagadla village of Jewargi taluk, Kalaburagi district.

3. Plaintiffs case in brief is as follows;

The plaintiff No.1 is father of plaintiffs No.2 to 4. The plaintiff No.1 is the Karta of the family. The plaintiff No.1 divided the suit property between the plaintiffs No.2 to 4 and another son by name late Ningappa S/o Mallappa in the

month of February-2013 to the extent of 90 X 25 feet each and their names have been entered in the Panchayath records nominally. The plaintiffs are in joint possession and enjoyment of the suit property. The defendant No.1 and 2 are real brothers to each other. The defendant No.3 is relative of defendant No.1 and 2. The defendants are stranger to the family and property of plaintiffs. Plaintiffs further averred that towards the Eastern side of suit property there is road running from North to South. Said road is in existence since time immemorial. The plaintiffs are using the said road to approach their house. Said road is Government road and the defendants have no right over the said road. However the defendants with an intention to harass the plaintiffs are storing the manure on the Eastern side of suit property. The defendants have no right, title, interest over the suit property. Plaintiffs further averred that due to storage of the manure, on the Eastern side of suit property the entrance to the house of plaintiffs is being blocked. The plaintiffs requested the defendants not to store the manure towards the Eastern side of suit property but the defendants refused to do so. Hence, plaintiffs filed this suit thereby sought to declare their right to

use the suit road and also sought to restrain the defendants from interfering into the peaceful possession and enjoyment of the plaintiffs over the suit property and also sought to issue mandatory injunction against the defendants to remove the manure pits existing on the suit property.

4. After service of suit summons the defendant No.1 appeared through his counsel and filed his written statement. Though suit summons served on the defendant No.2 and 3 but they did not appear as such they have been placed *exparte*.

5. Contents of written statement of defendant No.1 in brief are as follows;

Defendant No.1 denied the existence of suit property and also denied the content of plaint averments. The defendant No.1 further contended that the defendant No.1 and 2 are the owners and in possession of suit property bearing G.P.No.3-236/1 measuring towards the East to West: 30 feet and the North to South: 40 feet situated at Halagadla village of Jewargi taluk and the said property is ancestral joint family property of defendant No.1 and 2 and using the same since time immemorial and now the defendant No.1 installed one

shop of photo studio and mobile shop on his property and he is doing his business. The plaintiffs with an intention to grab the suit property have filed a false suit against the defendants. Plaintiffs have no cause of action to file this suit. On these grounds defendant No.1 sought to dismiss the suit with costs.

6. On the basis of above pleadings, my learned predecessor has framed the following issues.

ವಿವಾದಾಂಶಗಳು

1. ವಾದಿಯರು ದಾವಾ ಸ್ವತ್ತಿನ ಕಾನೂನು ಬದ್ಧ ಹಕ್ಕುದಾರರು ಮತ್ತು ಸ್ವಾಧೀನದಾರರು ಎಂಬುದನ್ನು ರುಜುವಾತು ಪಡಿಸುತ್ತಾರೆಯೇ?
2. ವಾದಿಯರು ದಾವೆಯಲ್ಲಿ ತೋರಿಸಿರುವ ದಾವಾ ಆಸ್ತಿಯನ್ನು ಉಪಯೋಗಿಸುವ ಹಕ್ಕನ್ನು ಹೊಂದಿದ್ದಾರೆಯೇ ರುಜುವಾತು ಪಡಿಸುತ್ತಾರೆಯೇ?
3. ವಾದಿಯರು ಹೇಳಿದಂತೆ ಪ್ರತಿವಾದಿಯರು ದಾವಾ ಸ್ವತ್ತಿನ ನೆಮ್ಮದಿಯಾದ ಸ್ವಾಧೀನ ಅನುಭವಕ್ಕೆ ಹಸ್ತಕ್ಷೇಪ ಮಾಡುತ್ತಿದ್ದಾರೆ ಎಂಬುದನ್ನು ರುಜುವಾತು ಪಡಿಸುತ್ತಾರೆಯೇ?
4. ವಾದಿಯರು ತಾವು ಕೋರಿರುವ ಪರಿಹಾರಗಳನ್ನು ಪಡೆಯಲು ಅರ್ಹರೇ?
5. ಯಾವ ಆದೇಶ ಅಥವಾ ಡಿಕ್ರಿ?

7. In order to prove their case, the plaintiff No.1 examined himself as PW1 and relied upon 17 documents which are marked as Ex.P.1 to Ex.P.17 and closed their side. On the other hand the defendant No.1 examined himself as DW1 and

relied upon 6 documents which are marked as Ex.D.1 to 6 and closed their side.

8. Argument by the plaintiffs not submitted, as such plaintiffs side argument is taken as nil. Heard arguments from the learned counsel appearing for the defendants, perused the pleadings, oral and documentary evidence available on record.

9. My finding to the above issues is as follows;

Issue No.1: In the Negative.

Issue No.2: In the Negative.

Issue No.3: In the Negative.

Issue No.4: In the Negative.

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

:R E A S O N S:

10. ISSUE NO.1 TO 3 : Since these issues are interconnected with each other in order to avoid repetition of facts and discussion of evidence, they are taken up together for common discussion.

11. According to plaintiffs they are owners and in possession of house bearing G.P.No.3-207 measuring 90 feet East to West and 100 feet North to South. Plaintiffs also

averred that towards Eastern side of their house there is a road and they are using the said road since time immemorial and the defendants have storing the manure on the Eastern side of suit property. As such burden is on the plaintiffs to prove the Issue No.1 to 3. The plaintiffs in their plaint averments specifically averred that suit property is their ancestral property. The plaintiff No.1 is examined himself as PW1. In his affidavit filed in lieu of examination-in-chief PW1 has reiterated the plaint averments. PW1 in his cross-examination on Page No.4 specifically deposed that suit property is not their ancestral property and suit property was Government land and he has got mutated in his name. It is already noted that in their plaint, the plaintiffs have averred that the suit property is their ancestral property but in the above evidence of PW1 he has not deposed that the suit property is ancestral property rather deposed that suit property was a Government property. As such above evidence of PW1 is contrary to their pleading. PW1 further deposed that the Government has granted the Hakku Patra to him pertaining to suit property. He further deposed that he has produced the said Hakku Patra before the court. A perusal of

documents produced by the plaintiffs it disclose that the plaintiffs have not produced any Hakku Patra issued by the Government. The PW1 also deposed that he has produced construction permission issued by the Gram Panchayath to construct their house but the plaintiffs have not produced any construction permission as such. Exhibits P.7 to 10 are House extracts pertaining to property No.207/1, 207/2, 207/3 and 207/4. A perusal of Ex.P.7 to 10 it disclose that property No.207/1, 207/2, 207/3 and 207/4 are standing in the name of plaintiff No.2 to 4 and one Ningappa respectively. In the Ex.P.7 to 10 the measurement of property standing in the name of plaintiff No.2 to 4 and Ningappa is not mentioned. Further, the suit property is 3-207 but the properties standing in the name of plaintiffs No.2 to 4 are not 3-207 rather their property number are 207/1, 207/2, 207/3 and 207/4. Ex.P.11 is Hand Sketch Map of property standing in the name of plaintiff No.1 Mallappa but in the Ex.P.11 house number is mentioned as 3285, as such it is crystal clear that Ex.P.11 is not related to the suit property. Exhibits P.12 to 15 are Hand Sketch Maps and in the said Maps property number is 2-207 but the suit property is 3-207 as

such Exhibits P.12 to 15 are also not related to the suit property. Further, according to plaintiffs the defendants have stored the manure on the Eastern side of suit property but the plaintiffs have not produced any material to show that the defendants have stored the manure towards the Eastern side of their property. PW1 in his cross-examination on Page No.5 at Para No.2 specifically admitted that the defendants have not stored manure in his property or in the properties of other plaintiffs. Relevant portion of cross-examination of PW1 is as follows;

‘ನನಗೆ ಮತ್ತು ಉಳಿದ ವಾದಿಯರಿಗೆ ಸೇರಿದ ಜಾಗದಲ್ಲಿ ಪ್ರತಿವಾದಿಯರು

ಯಾವುದೇ ಗೊಬ್ಬರ ಹಾಕುವ ತಿಪ್ಪಿಗಳನ್ನು ನಿರ್ಮಾಣ ಮಾಡಿರುವುದಿಲ್ಲ.’

Above admission of PW1 clearly demonstrate the fact that the defendants have not stored manure in the property of plaintiffs. It is important to note here that plaintiffs though averred that they are owners of suit property and the defendants have stored manure in the Eastern side of suit property but they have not produced title deed to show that they are owners of suit property and also they have not produced any material to show that the defendants have stored the manure in the suit property. The Exhibits P.1 to 17

produced by the plaintiffs are not the documents of title of plaintiffs to the suit property. It is important to note here that the person who claims ownership over a the suit property it is imperative to him to establish his title to the suit property. As such it can be inferred that plaintiffs have failed to establish their title and possession over the suit property and alleged interference by the defendants. With these observations, Issues No 1 to 3 are answered in the Negative.

12. ISSUE NO.4: While answering on Issues No.1 to 3 it is already noted that the plaintiffs have failed to establish their title and possession over the suit property and alleged interference by the defendants. The relief of declaration of ownership over suit property could be granted only when the person who seeks such relief produce the title to the suit property. Further, the relief of perpetual and mandatory injunction is highly discretionary reliefs which can be granted only on proof of facts. There is no evidence to prove as to the ownership of plaintiffs over the suit property. As such, I am of the opinion that, the declaratory relief cannot be granted to the plaintiffs and Perpetual and Mandatory Injunction cannot

be issued against the defendants. With these observations, Issue No.4 is answered in the Negative.

13. ISSUE NO.5: For the foregoing reasons, I proceed to pass the following-

ORDER

The suit is dismissed with costs.

Draw decree accordingly.

(Dictated to the Stenographer, directly on Laptop, corrected and then pronounced by me in the open court on 18th day of February-2020)

(SHIVARAJ. V. SIDDESHWAR)
Civil Judge & JMFC, Jewargi.

ANNEXURE

1. List of witnesses examined for the plaintiffs:

PW1 : Mallappa S/o Bailappa Heroor.

2. List of documents marked for the plaintiffs:

Ex.P.1
to 6 : Tax paid receipts.

Ex.P.7
to 10 : House extracts.

Ex.P.11
to 15 : Hand Sketch Maps.

Ex.P.16 : Vatni Patra.

Ex.P.17 : Photo.

3. List of witnesses examined for the defendants:

DW1 : Nagappa S/o Somalingappa Kadkal.

4. List of documents marked for the defendants:

- Ex.D.1 : House extract.
- Ex.D.2 : Hand Sketch Map.
- Ex.D.3 : Tax paid receipt.
- Ex.D.4 : House extract.
- Ex.D.5
and 6 : Tax paid receipts.

Civil Judge & JMFC,
Jewargi.