

IN THE COURT OF SENIOR CIVIL JUDGE AT MADIKERI

Present:- Smt. Roopa K, B.A.L. LL.B.
Senior Civil Judge, Madikeri

O. S. No.8/2020

Dated: 30th day of October 2021

PLAINTIFFS: -

1. Mr.Nagendra.M.P
Age:46 years, S/o late Mr.Prakash.M.S
Resident of # 11/25-1,
College Road, Near Rama Mandira,
Madikeri, Kodagu District.
2. Mr.Raghavendra.B.N Age:44 years,
S/o B.B.Narayana, 17th K.H.B.Colony,
Near Omkareshwara Temple,
Dechur, Madikeri, Kodagu District.
3. Mr.Godwin Mascarenhas,
Age:40 years, S/o Late Gregory
Mascarenhas, # 117/4, Greg Villa,
New Extension, Madikeri
Kodagu District.

(Represented by Sri.C.S.P, Advocate)

-Vs-

DEFENDANTS:-

1. Smt.M.P.Jayalakshmi, Age:60 years,
W/o Late Poovaiah,
R/at Karnangeri Village,
Madikeri Taluk, Kodagu District.
2. Mr.H.C.Krishnappa, Age:68 years,
S/o late Cheluvaiah,
R/at Karnangeri village,
Madikeri Taluk, Kodagu District.
3. Mr.H.C.Basappa, Age:63 years,
S/o late Cheluvaiah,
R/at Karnangeri Village,

Madikeri Taluk, Kodagu.

4. Mr.H.C.Venkatesh, Age:62 years,
S/o late Cheluvaiah, R
R/at Karnangeri Village,
Madikeri Taluk, Kodagu District.

(Represented by Sri.H.T.N, Advocate)

Date of Institution of the suit : 29.01.2020
Nature of the suit : Declaration and Permanent
Injunction.
Date of the commencement
of recording of evidence : 11-02-2021
Date on which the Judgment
is pronounced : 30.10.2021
Total duration : Year/s Month/s Day/s
01 09 01

(Roopa K)
Senior Civil Judge. Madikeri

J U D G M E N T

The plaintiff has filed this suit for relief of declaration of title and permanent injunction against the defendant with respect to the suit schedule property and cost of the suit.

2. **The brief facts of plaintiff case is as:-** It is stated that the suit schedule property an area of 0.46.00.00 acres of Redeem Sagu Kushki landed property bearing sy.no.115, Kata No.128 situated at

Karnangeri village, Madikeri taluk, Kodagu district was a government Raisary land, granted to one Mr.Alphonso Lasardo vide Order No.LND/I/8217/67-68 dt.4.12.1967 Patta dated 26.8.1968 by the Government and after his death on1.6.1978, his wife and children have succeeded to the suit schedule property, who in turn have sold the suit property to Mr.Kiran Shankar Rai by registered deed of sale dated 16.06.1995 and delivered the vacant possession of the suit schedule property to him. The said Kiran Shankar Rai has sold the suit schedule property by registered sale dated 28.05.1999 to Mr.Ashwini Karumbaiah, for sale consideration amount and delivered the possession of the suit schedule property to the said Ashwini Karumbaiah, who in turn sold the suit schedule property to the plaintiffs by a registered deed of sale dated 30-10-2017 registered as document No.MDK-1-01727-2017-18 and delivered the possession of the suit schedule property to the plaintiffs. As there was mistake in spelling in the name of the vendor, the mistake was rectified by rectification deed dated 9.8.2918 which was registered at the office of the sub registrar of Madikeri, Kodagu and revenue records of the delivered the possession of the suit schedule property were transferred to the name of the plaintiffs and they are in actual physical

possession, enjoyment and cultivation and lawful owners with clear title and delivered the possession of the suit schedule property.

Further the defendants have no manner of right, tried to trespass into the suit schedule property on 6.1.2020 and tried to encroach the suit schedule property which was resisted by the plaintiffs. Hence, the defendants have filed caveat on 7.1.2020 before this Hon'ble Court falsely claiming that they are the owners of the suit schedule property and they are in possession of the suit schedule property. The defendants may dispossess the plaintiffs from the suit schedule property. The rights of the plaintiffs have to be protected from the illegal acts of the defendants. Hence the suit.

4. In response to suit summons, the defendants though appeared through their Advocate, but, not filed any written statement and not challenged the evidence of plaintiff. Hence the matter was posted for plaintiff evidence.

5. The plaintiffs in order to prove their case, the 1st plaintiff is examined as PW.1 by way of affidavit and got marked seven documents as per Exs.P.1 to P.7.

6. I have heard argument on behalf of plaintiff. Upon

hearing the arguments and on perusal of evidence on record, the following points arise for my consideration;

POINTS

1. Whether the plaintiffs prove that they are absolute owners in possession of suit schedule property?
2. Whether the plaintiffs prove that there is an alleged interference by the defendants?
3. Whether the plaintiffs are entitled for relief as sought for?
4. What Order or decree?

7. My answer to the above points are as follows;

POINT No.1 and 2: In the Affirmative.

POINT No.3 : In the Affirmative.

POINT No.4 : As per final order.

REASONS.

8. **POINTS No.1 & 2 :-** In this case, the plaintiffs have contend that they have purchased the suit schedule property under a registered sale deed dated 30-10-2017 from Mr.Ashwini Karumbaiah for a valid sale consideration and since then they are in possession of suit schedule property. Further, in the said sale deed dated 30-10-2017, there was a mistake in spelling in the name vendor. Hence, the same was rectified by the rectification deed dated 09-09-2018. The revenue records of suit schedule property

were transferred in the name of plaintiffs. The defendants though they have no any manner of right, title, interest over the suit schedule property, tried to trespass into the suit schedule property on 06.01.2020 and it was resisted by the plaintiffs. Again on 05.01.2020, the defendants have filed caveat before this Hon'ble Court falsely claiming that they are the owners of the suit schedule property. But, the defendants who are strangers to the suit schedule property, tried to dispossess the plaintiffs to deprive the lawful possession of the plaintiff. Hence, plaintiffs have filed this suit seeking relief of declaration as they are the absolute owners of the suit property.

9. In support of their claim, the plaintiff no.1 is examined as P.W.1 by an affidavit which is replica of plaintiff averments. In support of oral evidence, he has produced registered sale deed dated 13-10-2017 which was marked as Ex.P.2. Ex.P.1 is the Sale Deed pertaining to the suit property which was dated 16.06.1995. The vendor of plaintiff has purchased the same under a registered sale deed on 28.05.1999 from Kiran Shankar Rai. The said Kiran Shankar Rai has purchased the suit schedule property under a registered sale deed on 16.06.1995 from Mrs. Thereas D'Souza under a registered sale deed which was marked at Ex.P.1. Ex.P.3 is

the Mutation Extract pertaining to suit property which shows that the sy.no.121/15 measuring 0.46 cents was transferred from Kiran Shankar Rai to Ashwini Karumbaiah who is the vendor of the plaintiffs. Ex.P.4 is the Rectification Deed about the spelling mistake in the name of vendor of plaintiffs and Ex.P.5 was sketch pertaining to suit propriety and Ex.P.6 is the Revision Settlement Akar Bandh pertaining to suit property and Ex.P.7 is the certified copy of sale deed dated 28.05.1999 under which the said Ashwini Karumbaiah has purchased the suit property from Kiran Shankar Rai.

10. It is pertinent to note that the plaintiffs herein have purchased the suit property under a registered sale deed dated 30-10-2017. From this document, it is clear that the plaintiffs are the absolute owners of the suit schedule property. If at all the defendants have any right over the same, they should have contest the case by filing written statement. The evidence of P.W.1 and documents remained unchallenged. Though, defendants filed caveat before this Court and appeared in this case through Advocate, but not contest the case. This shows that certainly, there is an alleged interference by the defendants denying the claim of plaintiffs. Even in the caveat they have mentioned that they are

owners in possession of sy.no.115 of Karnangeri village, Madikeri taluk, Kodagu district measuring 4.68 acres which is the suit property in this case. But, for their well known reasons, they failed to contest the case. Therefore, an interference has to be drawn against them.

Apart from that, the plaintiffs have also established their title over the suit property by producing the cogent documents. Therefore, it is crystal clear that the plaintiffs are owners of suit property and they are in possession of the same and also by filing caveat petition, the defendants remain absent to contest the case which shows that there is an alleged interference by the defendants. Hence, the plaintiffs are entitled for the relief of permanent injunction against defendants. Therefore, I answer Points no.1 and 2 in the Affirmative.

11. Point no.3:- In view of my findings on Points no.1 and 2, certainly there is an alleged interference by the defendants for the lawful and peaceful possession of the plaintiff over the suit schedule property. Therefore, such acts of defendants need to be restrained by way of injunction. Hence, the plaintiff is entitled for the relief of injunction. Therefore, I answer point no.3 in the Affirmative.

12. Point No.4:-In view of findings on Issues No.1 to 3, I proceed to pass the following:

ORDER

The Suit of the plaintiff is decreed with cost.

Accordingly, it is declared that the plaintiffs are the absolute owner of suit schedule property.

Consequently, the defendants are hereby restrained from causing interference for peaceful possession and enjoyment of plaintiff over suit schedule property by way of permanent injunction.

Draw decree accordingly.

(Dictated to the Stenographer directly to the computer, typed by him, corrected and then pronounced by me in open court on 30^h day of October 2021).

Sd/-
(Roopa K)
Senior Civil Judge,
Madikeri.

ANNEXURE

List of witnesses examined on behalf of plaintiff:

PW.1 : Nagesh M.P

2. List of documents marked on behalf of plaintiff:

Ex.P1 & 2: Original Sale Deeds
Ex.P3 : M.C.Extract
Ex.P4 : Rectification Deed
Ex.P5 : Sketch
Ex.P6 : Akaraband
Ex.P7 : C.C. of sale deed dt. 28.05.99

3. List of witnesses examined on behalf of defendants:

Nil

4. List of documents marked on behalf of defendants:

Nil

Sd/-

(Roopa K)

Senior Civil Judge, Madikeri.