

Form No.9[Civil] **IN THE COURT OF PRL. CIVIL JUDGE & JMFC,**
Judgment in suits
R.P.91] **SOMWARPET.**

PRESENT:SMT.PRATHIBHA, B.A.L, LL.B.
Prl.Civil Judge & JMFC,
Somwarpet

O.S.No.57/2018

Dated this the 30th day of August 2019.

Plaintiffs : - 1.Mogappa, Aged 58 years,
S/o.late Kenchaiah,

2.B.K.Prakash, aged 43 years,
S/o.late Kenchaiah,

3.Smt.Thangyamma, aged 55 years,
S/o.late Kenchaiah,

4.Smt.Kavitha, aged 41 years,
S/o.late Basavaraju,

5. Prakruthi, aged 16 years,
S/o.late Basavaraju,

6.Prajwal, aged 12 years,
S/o.late Basavaraju,
[By Sri.D.K.Thimmaiah, Advocate]

V/s

Defendants - 1.Smt.Mallamma, aged 65 years,
W/o.Puttaswamy,

2.Smt.Asha, aged 32 years,
W/o. Late Halappa,

3.Smt.Sumithra, Aged 42 years,
W/o. Late Shivanna,

All the defendants No.1 to 3 are residing at
Doddabilaha village, Kodlipet hobli,
Somwarpet taluk, Kodagu district.

[By Sri.B.J.Deepak, Advocate].

Date of Institution of the suit - 25-06-2015

Nature of the suit - **Suit for declaration & Permanent Injunction.**

Date of the commencement of Evidence. - 21-07-2016

Date on which the judgment was pronounced - 31-08-2016

Total Duration	Year/s	Month/s	Day/s
	-1-	- 2 -	-1-

Prl. Civil Judge,
Somwarpet.

JUDGMENT

This is a suit filed by the plaintiff seeking judgment and decree of declaration to declare that the Plaintiffs are the owners of the suit schedule property and for Permanent Injunction against defendants, restraining them, their men, agents or any body claiming through or under them from interfering with the suit schedule property.

2. The plaintiffs' case is that, earlier to the year 1980, one Sri.Kenchaiiah, the father of plaintiffs and other 14 villagers were occupied the Government paisary land to the extent of 2.00 acres each in sy.no.51/3 of Doddabilaha village. Later they have got granted the said occupied lands in sy.51/3 through a common grant order by the Tahsildar, Somwarpet taluk, in his order Hukum No.LND/SC/172/8-81 dated 18-11-1980. Except the said common grant order no other individual grant order or Saguvali chit given to Sri.Kenchaiiah. In pursuance of the said grant order or saguvali chit given to Sri.Kenchaiiah. Accordingly, the Revenue Authority by surveying the said lands through the Surveyor have assigned

separate survey numbers to each grantees and sy.mo.51/35 ie., the suit schedule property is allotted to Sri.Kenchaiiah. Accordingly, the said land got mutated in the name of said Sri.Kenchaiiah through Mutation Register No.7/1983-84 and Jamabandi made in his favour. That on 18-07-1996, the said Kenchaiah died on 18.7.1996. After his death, his wife Smt.Kenchamma continued the possession of suit property. After his death, Sri Basavaraju died on 15.8.2007. After his death, Smt.Kenchamma also died on 12-05-2008. Later Mogappa, B.K.Prakash plaintiffs no.1 and 2 herein and late Basavaraju by his L.Rs and his daughter Smt.Thangiyamma (plaintiff no.3) herein have continued the possession and enjoyment of the suit schedule property by raising plantain trees, silver oak and other shade trees . All the revenue records are standing in the name of plaintiffs. The defendants are the same villagers who claims the suit schedule property belongs to them and attempted to dispossess the plaintiffs from the suit schedule property and they tried to trespass over the suit schedule property on 25-05-2018 and on 20-06-2018. Though, the plaintiffs have given complaint, no remedy availed to plaintiffs. Hence, the suit is for declaration and permanent injunction.

3. In pursuance of suit summons, the defendants appeared through their Advocate Sri.B.E.J, but no written statement is filed. Hence, written statement is taken as not filed. Hence, as the defendants did not appear, case was posted for plaintiff's evidence. Accordingly, the plaintiff no.4 has been examined as P.W.1 on behalf of other plaintiffs also and got marked sixteen documents as Exs.P.1 to P.20.

4. Heard.

5. The points that arose for my consideration is:

1. Whether the Plaintiffs Prove that they have inherited the suit schedule property by said late Kenchaiah and as such they became the Owner of the Suit Schedule Property?
2. Whether the Plaintiffs Prove that they are in lawfull Possession and enjoyment of the suit schedule property?
3. Whether the Plaintiffs prove that defendants are interfering with the the suit schedule property?
4. Whether the plaintiffs are entitled to declare that they are the owners of the suit schedule property?
5. Whether the Plaintiffs are entitled for the relief of permanent injunction as prayed?
6. What order or decree?

6. My findings to the above issues is as under:

Point No.1 to 5 In the Affirmative.

“ No.6 – As per final order below for the following:

REASONS

Points No.1 to 3 :

7. The above points has its direct bearing on the discussion of another point. In order to avoid repetition of discussion and for the purpose of brevity and convenience, I would like to discuss them jointly.

8. On perusal of the plaint and the documents, it appears that the case of the plaintiffs is supported by the documents

and there is no inconsistency between the facts pleaded by the plaintiffs. To substantiate the case of the plaintiffs, the Plaintiff No.4 Smt.Kavitha, wife of late Basavaraj, has been examined as P.W.1, filed affidavit in lieu of her examination-in-chief, wherein she has stated that she is the 4th plaintiff in this case. She has reiterated the plaint averments stating that That in the year 1980, her father-in-law Sri.Kenchaiiah, the father of her husband so also other plaintiffs, was granted with the suit schedule property in sy.no.51/35 through a common order by the Tahsildar, Somwarpet taluk, in his order Hukum No.LND/SC/172/8-81 dated 18-11-1980. Accordingly, the said land got mutated in the name of said Sri.Kenchaiiah through Mutation Register No.7/1983-84 and Jamabandi made in his favour. That on 18-07-1996, the said Kenchaiah died. After his death, his wife Smt.Kenchamma continued the possession of suit property. She also died on 12-05-2008. After her death, her sons, the plaintiffs no.1 and 2, her husband Late Basavaraju and late Kenchaiah's daughter Smt.Thangiyamma (plaintiff no.3) herein have continued the possession and enjoyment of the suit schedule property by raising plantain trees, silver oak and other shade trees. That her(plaintiff no.4) husband Basavaraju also died on 15-08-2007. All the revenue records are standing in the name of plaintiffs. Further, narrated the interference by the defendants 25-05-2018 and on 20-06-2018. Though, the plaintiffs have given complaint, no remedy availed to them.

9. I have gone through the documents produced by the Plaintiffs. The Plaintiff was examined and he has reiterated

the entire plaint averments in his evidence before Court and also produced as many fourteen documents as Exs.P.1 to P.14. Ex.P.1 is the M.R.NO.7/83-84. Ex.P.2 is the Jamabandi of sy.no.51/35, . Ex.P.3 is the Jamabandi of sy.no.51/35 for the year 2000. Ex.P.4 is the RTC bearing sy.no.51/35. On perusal of all these documents, it clearly discloses that the suit schedule property was allotted to said Late Kenchaiah. Ex.P.5 is the Bhoo Hiduvali Pramana Pathra which is in the name of plaintiffs herein regarding the suit schedule property. Ex.P.6 is the Revenue paid receipt. Ex.P.7 is the Genealogical tree registration certificate of plaintiff no.1. It is the contention of the plaintiffs that the defendants are interfering to the suit schedule property. Hence, they have lodged complaint. Exs.P.8 and P.9 are police endorsement in this regard. Ex.P.10 is the Prapathra 15 for having paid copy application fee by the plaintiff no.4. Ex.P.11 is the value list of immovable properties of Doddabilaha village and other villages. Ex.P.12 is the Sketch of Doddabilaha village. Ex.P.13 is the original Death Certificate of late Kenchaiah. Ex.P.14 is the original Death Certificate of late Basavaraju, the husband of plaintiff no.4. Ex.P.15 is the original Death Certificate of late Kenchmma, the mother of the plaintiffs no.1 and 2. Exs.P.16,17 and 18 are photographs of suit schedule property. Ex.P.19 is the Genealogical tree of plaintiff no.2. Ex.P.20 is the notarized copy of Genealogical tree of plaintiffs. So, on perusal of Exs.P.1 to P.20, it clearly establishes that the Plaintiffs are the absolute owners of the suit schedule property and defendants are suit schedule property.

10. The defendants to disprove the contention of the plaintiff has appeared through their Advocate Sri.B.E.J., but no written statement is filed. Hence, written statement is taken as not filed. Thereafter, the defendants have not appeared before the Court and did not challenge the versions of plaintiffS. Hence, it is pertinent to note in this case that the defendants have not appeared before the Court nor stepped into witness box nor produced any documents. In this regard, I have made my reference to the decision rendered in **ILR 1998 Karnataka 2655**. In the said decision our Lordship has held that,

“ When the defendants does not appear while the court is safeguard that the summons have been duly served, the Court shall pass a decree as prayed for by the plaintiff, unless the relief itself is prima facie barred by limitation or unknown to law. But when it involves a factual allegation it is not the duty of the court to go into such factual allegation and find out whether factual allegations are true or not”. The ratio laid down in the said decision reveals that no duty is castes upon the court to analysis and to touch the factual allegation to know whether they are true or not in the case where the defendant do not appear to counter the suit of the plaintiff.”

11. In the present case the court has to consider whether the plaintiff has proved their case by adducing oral and documentary evidence. Since the plaintiffs have approached this Court they have to prove their case. On perusal of entire evidence and documents produced by the plaintiffs, it clearly established that they are the owners of the suit schedule property as on the date of filing of the suit and the defendants have inherited the suit schedule property by said late Sri.Kenchaiiah. Further the plaintiffs by producing the Police Endorsements as per Exs.P.8 P.9, proved the interference by the defendants. Hence, I answer points No.2 & 3 in the Affirmative.

12. Points No.4 and 5:- The plaintiffs have proved that the suit schedule property was in the possession of late Kenchaiah, father of plaintiffs no.1 to 3, and father -in-law of plaintiff no.4 and plaintiffs no.5 and 6 are her children born by late Late Basavaraj, one of the said late Kenchaiah, after his death and their mother, they are all in possession and enjoyment of the suit schedule property by producing relevant documents. They have also proved the interference by the defendants, by producing relevant documents. Hence, I hold that the plaintiffs are entitled for the relief as sought in this suit and accordingly, I answer Points No.4 and 5 **in the Affirmative**.

13. Point No.6:- In view of the findings given on points no.1 to 5, I proceed to pass the following:

ORDER

The suit of the plaintiff is hereby decreed with costs.

It is hereby declared that the Plaintiffs are owners of the suit schedule property.

Consequently, defendants, their men, agents or anybody claiming through them or under them from interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiffs by way of Permanent Injunction.

Draw decree accordingly.

[Dictated to the stenographer directly to the Computer, transcribed by her in computer, corrected by me and then, pronounced by me in the open Court this the 30st Day of August 2018].

[Prathibha]
Prl. Civil Judge & JMFC.,
Somwarpet.

APPENDIX

List of witnesses examined for plaintiff's side:

P.W.1 Smt.Kavitha.

List of documents marked for plaintiff's side:

Ex.P.1 M.R.NO.7/83-84.

Ex.P.2 Jamabandi of sy.no.51/35, 51/38, 51/32.

Ex.P.3 Jamabandi of sy.no.51/35 for the year 2000.

Ex.P.4 RTC bearing sy.no.51/35.

Ex.P.6 Revenue paid receipt.

Ex.P.7 Genealogical tree registration certificate of plaintiff No.1

Exs.P.8 and P.9 Police endorsements.

Ex.P.10 Prapathra No.15

Ex.P.11 Value list of immovable properties of Doddabilaha village.

Ex.P.12 Sketch of Doddabilaha village.

Ex.P.13 Original Death Certificate of late Kenchaiah.

Ex.P.14 Original Death Certificate of late Basavaraju.

Ex.P.15 Original Death Certificate of late Kenchamma.

Exs.P.16,17 and 18 Photographs of suit schedule property.

Ex.P.19 Genealogical tree registration certificate of plaintiff no.2.

Ex.P.20 is the notarized copy of Genealogical tree of plaintiffs.

List of witnesses examined on behalf of defendant: NIL

List of documents marked for defendant's side: NIL.

Prl. Civil Judge & JMFC.,
Somwarpet.

