

KAKL400013982017



**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND
JMFC., AT MULBAGAL.**

**Present: Sneha M., B.A. LL.B.,
Addl.Civil Judge and J.M.F.C.,
Mulbagal.**

DATED THIS THE 5th DAY of APRIL 2023

O.S.No.257/2017

PLAINTIFF/s : Smt. Soudhamani
W/o Dhobi Ramappa,
Aged about 64 years,
R/at Bevanatha Village,
Thayaluru Hobli, Mulbagal Taluk.

(By Sri. S.D.C.,
Advocate)

-V/s-

DEFENDANT/s : 1. Sri. Dhobi Ramappa
S/o late Munivenkatappa,
Aged about 68 years.

2. Sri. R. Kodandarama,
S/o Dhobi Ramappa,
Aged about 39 years.

3. Sri. R.Chowdari,
S/o Dhobi Ramappa,
Aged about 37 years,

The defendant No.1 to 3 are
R/at Bevanatha Village,
Thayaluru Hobli,
Mulbagal Taluk.

4. Sri. S. Promodh,
S/o P.Sridharan,
Aged about 51 years,
R/at No.312, 7th Main, 6th Shetkar,
H.S.R. Layout, Bangalore-02.

(Defendants No.1 to 3 by Sri.S.K.M.,
Advocate)
(Defendant No.4 Ex-parte)

Date of institution of the suit	04-10-2017		
Nature of the suit	SUIT FOR DECLARATION AND PERMANENT INJUNCTION		
Date of commencement of recording of evidence	17-08-2019		
Date on which the Judgment was pronounced	05-04-2023		
TOTAL	YEAR	MONTH	DAY
	05	06	01

(SNEHA M.)
ADDL. CIVIL JUDGE AND J.M.F.C.,
MULBAGAL.

J U D G M E N T

This is a suit for Declaration and Permanent Injunction.

2. Brief Facts stated are : The suit schedule property originally is government land on the basis of continuous possession of the plaintiff over the suit schedule property the Tahasildar Mulbagal has granted the suit schedule property through grant certificate vide order LND RUO No. 506/2001-2002 dated: 30.01.2004 with a condition that it shall not be alienated for a period of 15 years and thereafter the katha was mutated in the name of the plaintiff. The defendant No.1 being the husband of plaintiff and defendant no. 2 and 3 being the sons of the plaintiff taking the undue advantage of illiteracy of the plaintiff have created documents and sold the property to the defendant No.4 through registered sale deed dated: 09.08.2017 by violating the non alienation condition imposed by the Tahasildar at the time of granting the suit schedule property. Even though there is no partition between the plaintiff family members the defendant

No.1 to 3 have created documents in their favour and sold the property. On the strength of the created documents defendant No.4 is trying to interfere with the plaintiff peaceful possession and enjoyment of the suit schedule property. On 30.08.2017 when the plaintiff was in the suit schedule property defendants with there supporters tried to obstruct the possession of the plaintiff but it is was resisted by the plaintiff with great difficulties. Hence the plaintiff approached this Court and filed this suit for the relief of declaration and permanent injunction.

3.In spite of service of suit summons the defendant no.4 has not appeared hence he is placed exparte. Even after giving sufficient opportunity the defendant no. 1 to 3 have not chosen to file written statement.

4. To substantiate her case, the plaintiff has examined herself as PW-1 and examined two more witnesses by name Goapalappa and Nagarajappa as PW2 and PW3 and got marked Ex.P1 to Ex.P21.

5. I have heard the arguments and counsel for the plaintiff has filed written arguments.

6. I have perused the records in detail.

7. On the basis of the pleadings the points arise for my consideration are :

1. Whether the plaintiff proves that she is the absolute owner of the suit schedule property?
2. Whether the plaintiff proves that she is in the possession of the suit schedule property?
3. Whether the plaintiff proves that the defendants tried to interfere in her possession over suit schedule property?
4. Whether the plaintiff proves that registered sale deed dated: 09.08.2007 is null, void and not binding on her?
5. Whether the plaintiff is entitled for the relief as sought for?
6. What order or decree?
8. My findings are :

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : In the Negative

Point No.4 : In the Negative

Point No.5 : In the Negative

Point No.6 : As per final order for the following :-

R E A S O N S

9. **Points No.1 to 5:-** Since these points involve common pleading and evidence, they are taken together for discussion.

10. Facts of the case as emerged from the plaintiff averments is narrated above in short. Therefore, I do not want to reiterate it here again. The plaintiff – PW.1 has filed affidavit in lieu of her examination-in-chief reiterating everything that is mentioned in the plaintiff.

11. Apart from the above oral evidence, the plaintiff has placed on record certain documents which came to be marked as Ex.P.1 to Ex.P. 21.

12. At the outset, it is to be noted that, the defendants have been placed exparte due to their non appearance despite service of suit summons. However, merely because the defendants remain absent or set exparte cannot be a

sole ground to hold that the plaintiff has proved her case. A reference can be made to a decision of Hon'ble Apex Court in the case of Mayadevi vs. Lalta Prasad reported in 2014 SAR(Civil) 487, it is held that **“No automatic decree to be passed in result of the defendant having been set exparte. The Court is nevertheless duty bound to diligently ensure that the plaint stands proved and prayers therein are worthy of being granted”.**

13. Thus, in this view of the position of law, now this court shall proceed to examine the case on hand in its proper perspective and also with careful scrutiny.

14. The specific case of the plaintiff is that the suit schedule property was granted to her through saguvali cheeti dated: 30.01.2004 with a condition that it shall not be alienated for period of 15 years. But the defendant No. 1 to 3 colluded with each other have sold the property to the defendant No. 4 through registered sale deed dated: 09.08.2007 even though partition has not taken place in their family.

15. To prove the same the plaintiff has produced Ex.P.1 to Ex. P8, Ex.P11 and Ex.P13 are the R.T.C extracts pertaining to Sy.No.87, measuring 3 acres 29 guntas is standing in the name of S. Promodh S/o P. Sridharan. Ex.P9 and Ex.P10 R.T.C extracts pertaining to Sy.No.14/P1, measuring 3 acres 29 guntas is standing in the name of Soudhamani W/o. Dhobiramaiah. Ex. P12 is the R.T.C extract pertaining to Sy.No.87, measuring 3 acres 29 guntas is standing in the name of R. Kodandaram S/o Dhobiramappa. Ex.P14 is the R.T.C extract pertaining to Sy.No.14/P1, measuring 3 acres 27 guntas is standing in the name of Amaranarayanswamy S/o Chinnappaiah. Ex.P15 is the mutation register extract M.R. No.7 for the period of 2003-04. Ex.P16 is the certified copy of sale deed dated 09-08-2007, Ex.P17 is the encumbrance certificate, Ex.P18 is the saguvali cheeti, Ex.P19 is the certified copy of land sketch map. Ex.P20 is the certified copy of memorandum notification, Ex.P21 is the certified copy of resolution. On perusal of the suit schedule property it is

noted that the survey number of the property is new No. 87 and old No. 14. On perusal of the saguvali cheeti it is noted that land bearing Sy.No.14 to the extent for 3 acres 29 guntas is granted in favour of the plaintiff and the RTC pertaining to Sy. No.14/p-1 is standing in the name of the plaintiff. The RTC pertaining to Sy. No. 87 is standing in the name of defendant No. 2 and 3 wherein the mode of acquittance shows that M.R.P. No. 15/2006-2007, partition dated: 24.05.2007 which shows that the defendant No.2 and 3 have obtained the land in Sy. No. 87 through partition, further the RTC pertaining from the year 2008 till 2018 pertaining to Sy. No. 87 to the extent of 3 acres 29 guntas is standing in the name of defendant no.4. The very case of the plaintiff is that the property in Sy. No. 14 was granted to her there after new survey number 87 was given to it , but in order to show that the Sy. No. 14 is the old Number of Sy. No. 87 the plaintiff has not produced any document by this it can be said that the Sy. No. 87 is not granted to the plaintiff. Even the mutation register produced by the plaintiff is pertaining to Sy. No. 14 /p-1 which is marked as

Ex.P 15 , it is pertinent to note that this document is issued on 16.08.2017, but the sale deed executed by defendant No. 1 to 3 in favour of defendant No.4 was executed on 09.08.2007 , if it is presumed that the suit schedule property is bearing old survey number has 14 and new survey number as 87 then the Ex.P 15 which is issued on 16.08.2017 would have recitals about the new survey number 87. From the year 2011 till 2018 the RTC pertaining to Sy. No. 87 is standing in the name of defendant No.4 , such being the case it cannot be said that the survey number 14 which is granted to the plaintiff and the sy. no. 87 are one and the same.

16. Since the present suit is for declaration of title the plaintiff should have produced cogent materials to prove her owner ship over the suit schedule property. Since the saguvali cheeti issued to the plaintiff in the year 2004 is pertaining to Sy No.14 and the suit schedule property bearing Sy. No. 14 as old number and Sy. No. 87 as new number it can be said that the plaintiff is claiming title over

new survey number 87. As already discussed the Sy. no. 87 and Sy. No. 14 are not one and the same and the plaintiff have not produced any document to show that when the old survey number 14 was changed to new survey number 87. Even the pleadings in the plaint do not elicit anything with respect to changing of the survey numbers. It is also pertinent to note that the plaintiff has inserted the old survey number 14 in the plaint and the schedule only through the amendment. Such being the case the plaintiff should have produced evidence to show that the survey number 14 has obtained new number as Sy.No. 87, but the plaintiff has failed to prove the same. Ex.P1 to 21 documents cannot be accepted as proof in the absence of any corroborative piece of evidence to establish that the suit schedule property holds new survey number 87.

17. Undoubtedly, burden is on the plaintiff to establish her ownership over the suit property with cogent and clinching materials. As indicated above, documents placed on record does not indicate ownership of the plaintiff over

the suit schedule property at any point of time. Harking back to the evidence of the plaintiff, on close scrutiny, this court comes to a conclusion that the evidence let in by the plaintiff both oral and documentary do not prove either her ownership or title or lawful possession over the suit schedule property. When plaintiff fails to prove her ownership the question of sale deed dated 09.08.2017 is null or void does not arise. Hence this answer Points No. 1 to 5 in the **“Negative”**.

18. **Point No.6:-** In view of the above discussions and reasoning this court proceeds to pass the following;

ORDER

*The suit of the plaintiff is hereby
dismissed with cost.*

Draw decree accordingly.

*(Typed by me on my laptop, after clerical additions by the stenographer, corrected
and pronounced by me in the Open Court on this the 5th April 2023)*

(SNEHA M.)
ADDL. CIVIL JUDGE AND J.M.F.C.,
MULBAGAL.

ANNEXURE**1. LIST OF WITNESSES EXAMINED FOR PLAINTIFF/s:**

P.W.1 : Soudhamani

P.W.2 : Gopalappa

P.W.3 : Nagarajappa

2. LIST OF WITNESSES EXAMINED FOR DEFENDANT/s:

- NIL -

3. LIST OF DOCUMENTS EXHIBITED FOR PLAINTIFF/s:

Ex.P.1 to Ex.P14 : R.T.C Extracts

Ex.P15 : Mutation register extracts

Ex.P16 : C/c. of sale deed dated 9-8-2007

Ex.P17 : Encumbrance certificate

Ex.P18 : Saguvali cheeti

Ex.P19 : C/c. of Sketch

Ex.P20 : C/c. of Memorandum notification

Ex.P21 : C/c. of resolution

4. LIST OF DOCUMENTS EXHIBITED FOR DEFENDANT/s:

- NIL -

(SNEHA M.)

ADDL. CIVIL JUDGE AND J.M.F.C.,
MULBAGAL.