

**IN THE COURT OF THE II ADDL CIVIL JUDGE & J.M.F.C MADDUR.
AT MADDUR**

PRESENT:- Sri. AMOL JAYKUMAR HIRIKUDE

B.A., LL.B.

**II Addl. Civil Judge and JMFC
Maddur.**

Dated this the 25th day of April 2018

O.S. No.440/2011

Plaintiff/s: Sri.Nagaraju S/o.Late Siddashetty, Aged
about 35 years, R/o Dodda Arasinakere
village, C.A.Kere Hobli, Maddur Taluk

(By Sri. MJ, Advocate)

-Vs-

Defendant/s:- **1.** Smt.Puttalakshamma w/o.Late
Subbarama Shetty, (Since dead by her
Lrs.
1 (a) Smt.Susheelamma
D/o.Late.Puttalaxamma,
W/o.Narayanashetty, aged about 55
years,
1(b) Smt.Sharadamma
D/o.Late.Puttalaxamma, aged about 52
years,
1(c) Smt.Rathnamma
D/o.Late.Puttalaxamma,
W/o.Rangaswamy, aged about 50 years,
1(d) Sri.D.S.Mahadevu
S/o.Late.Puttalaxamma, aged about
48 years,
1(e) Sri.D.S.Mohan
S/o.Late.Puttalaxamma, aged about 46
years,

1(f) Kitti D/o.Late.Puttalaxmamma, ,
aged about 44 years,

1(g) Smt.Balanagamma
D/o.Late.Puttalaxmamma,
W/o.Venkatlakshma, aged about 45
years,

2. Sri.Siddaraju S/o.Marishetty,
Aged about 45 years ,

3. Sri.Somashekar S/o.Marishetty,
Aged about 40 years ,

Defendant No.1 (a) to (g) are the residents
of Doddarasinakere village, Maddur
taluka.

Defendant No.2 and 3 are the residents of
Vajamangala village, Varuna hobli,
Mysore taluka and district.

**(D.1 (a) to (g) are represented by
Sri.B.M, Advocate. Defendant no.2
and 3 have been placed exparte)**

Date of Institution of the Suit : 16-11-2011

Nature of the Suit : Permanent injunction

Date of Commencement of recording
of the evidence : 13-02-2015

Date on which the judgment was
pronounced : 25-04-2018

TOTAL DURATION	Years	Months	Days
	-06-	-05-	-09-

J U D G M E N T

1. This is the suit filed by the plaintiff against the defendants seeking permanent injunction restraining them from interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiff. The suit property is a site measuring East-West 20 feet and South-north 17 feet bearing Junger No.136/Property No.252 situated at Dodda Arasinakere village, C.A.Kere hobli, Maddur taluka, morefully described in the schedule of the plaint.
2. The case of the plaintiff is that the suit property was the ancestral property of defendant No.2 and 3. The said defendants sold the suit property in favour of the plaintiff under the registered sale deed dated 26/5/2011. Since the date of purchase of the suit property by the plaintiff, he is in possession and enjoyment of the same as owner thereof. On the date of execution of the sale deed, the name of the defendant No.2 and 3 were appearing in the property extract of the suit property. Such being the case, the defendant No.1 having no manner of right, title or interest over the suit property with a malafide intention to knock off the same, has filed an appeal before the President, Taluka Panchayat, Maddur in Appeal No.20/2011-12 challenging the khata of the suit property made in the name of the defendant No.2 and 3. In the said appeal the plaintiff filed application to implead himself as he

was the necessary party by virtue of the said sale deed. But the said Taluka Panchayat rejected the application of the plaintiff and disposed the matter hurriedly to support the illegal claim of defendant No.1 and the khata of the suit property made in the name of defendant No.2 and 3 has been set aside. But immediately the plaintiff preferred the appeal before the Zilla Panchayat Mandya in Appeal No.34/2011-12 and the same was allowed by the Zilla Panchayat, Mandya by its order dated 07-08-2012 and the khata of the suit property was ordered to made in the name of the plaintiff by quashing the order of the Taluka Panchayat. However the said order of the Zilla Panchayat has been challenged by the defendant No.1 before the Hon'ble High court of Karnataka and the same is pending for consideration. Taking disadvantage of the said orders passed by the President, Taluka Pnachayat Maddur, the defendants with an intention to create evidence in their favour are making illegal attempts to put up illegal construction over the suit property. One such illegal attempt of defendants a week prior to filing of this suit has been averted by the plaintiff with the help of elders of the village. But the defendant No.1 colluding with the defendant No.2 and 3 is disturbing the possession of the plaintiff over the suit property. The plaintiff being unable to resist the interference of the defendants has filed this suit.

3. In pursuance of the summons defendant No.1 appeared and filed her written statement. Though the summons duly served on the defendant no.2 and 3, they did not appear as such they have been placed exparte. Subsequently the defendant No.1 died and her legal representatives have been brought on record. But it is pertinent to note that the legal representatives of defendant No.1 I.e Defendant No.1 (a) to (g) have neither filed their separate written statement nor they adopted the written statement filed their mother deceased defendant No.1. But any how they contested the suit basing the contentions taken by their mother defendant No.1 in her written statement, as such I feel it proper to consider written statement of defendant No.1 as the written statement defendant No.1 (a) to (g).
4. The defendant No.1 during her lifetime, she filed her written statement and she had denied the case of the plaintiff and further contended that she was in possession an enjoyment of the suit property. On the northern side of the suit property the house of the defendant No.1 is situated and she along with her sons and daughters were in possession of the suit property. The defendant No.2 and 3 being the residents of Mysore, they never in possession of the suit property. The suit property was originally belonged to the father in law of defendant No.1 and he was in possession of the same. After his death, his son Subramaiah was in possession

of the suit property. Later on after the death of the said Subramaiah his wife I.e defendant No.1 was in possession of the suit property. The defendant No.1 and her children are residing in the disputed property in No.134/249 and 136/252 and both the houses and the vacant place with asbestos roofing are one and the same. As per the panchayat records issued by the Dodda Arasinakere Panchayat, the suit property is in the name of defendant No.1 and the same were stood in the name of her husband. Even the Taluka Panchayat has ordered to enter the name of defendant No.1 by setting aside the khata made in the name of defendant No.2 and 3. Further the defendant No.1 has also paid kandayam to the panchayat in respect of the suit property. The defendant No.1, her husband and her father in law were in possession of the suit property. The plaintiff and the vendors of the plaintiff were never in possession of the suit property. When the defendant No.1 was preparing to put up the wall on the eastern side and the southern side of the suit schedule property, the plaintiff has filed this suit. There is galli situated in between the house of plaintiff and the defendant No.1 and the same is of width of 10 feet. The suit property is at the distance of 30 feet from the house of plaintiff. Therefore the defendant No.1 had prayed to dismiss the suit.

5. On the basis of the pleadings, the following issues were framed by my predecessor in office :

- 1) whether the plaintiff proves that he is in possession and enjoyment of the suit property ?
- 2) Whether the plaintiff further proves the alleged interference by the defendants ?
- 3) Whether the plaintiff is entitled for the relief sought for?
- 4) What order or decree ?

6. In order to prove the case of the plaintiff, the plaintiff got himself examined as PW.1 and got marked Ex.P1 to 10 documents and on his behalf he examined three witnesses viz.Channappa, D.K.Nanjundiah and Shankar B respectively as P.W.2 to 4. Out of them the evidence of P.W.2 has been got discarded by the plaintiff by filing memo. Further on behalf of plaintiff Ex.P.11 and 12 have been marked by way of confrontation in the cross examination of D.W.2 and 1 respectively.

7. On the other hand, the defendant No.1(d) got himself examined as DW.1 and got marked Ex.D1 to 21 documents and on their behalf he examined one witness viz. Kondegowda as Dw.2 and closed their side evidence.

8. I have heard the arguments of Sri.MJ, Advocate for plaintiff and Sri.B.M, Advocate for the defendant No.1(a) to (g) and perused the material available on record.

9. My findings on the above issues are as follows

Issue No.1:- Affirmative.

Issue No.2:- Affirmative.

Issue No.3:- Affirmative.

Issue No.4:- As per final order for the following

REASONS

10. Issue No.1 to 3 :- This suit is filed for bare injunction, as such to decide this case, only the possession of the plaintiff over the suit property and the alleged interference by the defendants to his possession are required to be considered.

11. The plaintiff claims to be in possession of the suit property by virtue of the registered sale deed dated 26/5/2011 executed by defendant no.2 and 3, the earlier owners of the suit property. To prove this fact, the plaintiff got himself examined as Pw.1 by filing affidavit and got marked Ex.P1 to 12 documents on his behalf. In the affidavit of Pw.1 he has reiterated the contents of plaint. The Ex.P1 is the sale deed dt: 26-5-2011 executed by defendant no.2 and 3 in favour of the plaintiff in respect of suit property. Ex.p2 is the tax assessment extract of the suit property pertaining to the year 2010-11, on perusal of the same it appears that, the suit property was in occupation of one Chikkamuddashetty and by bracketing his name, the name of defendant no.2 and 3 is

entered in the possessors column. Ex.P3 is the assessment register pertaining to the suit property. On Ex.P3 it is endorsed that the tax pertaining to the suit property has been paid by defendant no.2 for the year 1987-88 to 1994-95. It is pertinent to note that, the Ex.P3 has been issued on 10-6-1994 i.e. almost 17 years prior to filing of this suit in an undisputed point of time, therefore the defendant no.1 and her Lrs cannot deny the relationship of defendant no.2 and 3 with the suit property. Ex.P4 is the house tax list book of the suit property and the same is standing in the name of defendant no.2 and 3. Ex.P5 and 6 are the tax paid receipts of the suit property dt: 1-6-2011 paid by the plaintiff. Ex.P7 is the receipt dt: 7-5-1994 for having remitted the tax by the defendant no.2 with respect to suit property. Ex.P8 is the another tax paid receipt pertaining to khata no.843 of D.A. Kere village. Ex.P8 is pertaining to the another property purchased by the plaintiff under Ex.P1 along with the suit property. Ex.P9 is the house/site tax assessment extract of suit property pertaining to the year 2012-13. On perusal of Ex.P9 it appears that the name of the plaintiff is entered in the possessors column of the suit property on the basis of the MR no.78/2012-13. Ex.P10 is also another property extract of the suit property pertaining to the year 2002-03, wherein the name of defendant no.2 and 3 is appearing jointly in the possessors column. Ex.P11 is the photo of the door of the house of defendant no.1.

Ex.P12 is the appeal petition filed by the deceased defendant no.1 before the President, Taluk Panchayath, Maddur challenging the khata made in the name of defendant no.2 and 3 in respect of the suit property.

12. The Pw.1 has been subjected to cross examination by the defendants to ascertain whether he really inquired or not about the ownership of the defendant no.2 and 3 over the suit property prior to purchasing of the same. Accordingly, the Pw.1 has stated in his cross examination that, he by verifying the khata of the suit property standing in the name of the grand-father of defendant no.2 and 3 viz. Chikkamuddashetty and after his death in the name of defendant no.2 and 3, has purchased the suit property. The evidence of Pw.1 has been substantiated by the documents produced by him i.e. Ex.P2 to 10. The Ex.P3 is the property assessment register extract of the suit property of the year 1994 and the same was standing in the name of Chikkamuddashetty i.e. the grand father of defendant no.2 and 3. Likewise Ex.P2 is the property extract, wherein the name of the Chikkamuddashetty has been bracketed and the name of defendant no.2 and 3 has been entered. The Ex.P9 is also the property extract of the suit property, wherein the name of the plaintiff is entered on the basis of the registered sale deed. These documents substantiates the case of the plaintiff and increases the probability of the possession of the plaintiff over the suit property. It is pertinent to note that, though the defence

of the defendants is that, the suit property was belonged to their grand-father and after the death of their grand-father the same was succeeded by their father Subbarao Shetty and after the death of Subbarao Shetty, the name of defendant no.1 came to be entered to the property extract of the suit property. But the defendants have not at all suggested anything in this regard either to Pw.1 or 3 and 4.

13. It is the further defence of the defendants that, though the suit property belongs to defendant no.1, but the name of defendant no.2 and 3 have been entered in the property extract of the suit property without any basis. And the defendant no.1 along with his family members is in possession of the suit property since last many years. But in order to show that, the suit property was standing in the name of the father-in-law of defendant no.1 or in the name of her husband, either defendant no.1 or her Lrs have not produced anything. Though the defendants evasively denied that, the defendant no.2 and 3 are not the grand-sons of the said Chikkamuddashetty, but they did not contend that, he is related to the defendant no.1.

14. The evidence of Pw.2 has been discarded in view of the memo filed by the plaintiff. The Pw.3 is the neighbour of suit property towards its southern side. He stated in his examination in chief affidavit that, originally the suit property was belonged to one Muddashetty and later on the same was transferred to his grand children i.e.

defendant no.2 and 3. On the basis of the same the defendant no.2 and 3 have sold the suit property in favour of the plaintiff. Since the date of sale deed the plaintiff is in possession of the suit property. One week prior to filing of this suit, the defendants illegally attempted to demolish the old shed put up on the suit property to construct thereon, but the same was averted by him and others along with the plaintiff. In the cross examination of Pw.3 it has been suggested to Pw.3 that the defendant no.2 and 3 are not the residents of D.A. kere village and being so they never in possession of the same, but the said suggestions have been denied by Pw.3 and stated that though they are the residents of Vajamangala village in Mysore District, but they used to come to the D.A. Kere village to the house of their grand-father Muddashetty.

15. The Pw.4 deposed about signing of him on Ex.P1 sale deed. Accordingly he deposed about the witnessing of execution of the said sale deed by the defendant no.2 and 3 in favour of plaintiff with respect to the suit property. Though the defendants have cross examined him suggesting that the suit property was not belonged to the defendant no.2 and 3 and the Ex.P1 has been fabricated by them, but the said suggestions have been denied by Pw.4. It is clear from the evidence of the witnesses of plaintiff that, the defendant no.2 and 3 are not the permanent residents of D.A. Kere village, but the documents produced by the plaintiff as narrated supra are

much prior to the filing of this suit and the same show that the defendant no.2 and 3 have paid tax to the concerned panchayath in respect of the suit property. Therefore, the mere absence of the defendant no.2 and 3 from the village cannot be said that they were not in possession of the suit property.

16. The defence of the defendant no.1 is that, the suit property is their ancestral property and the same was stood in the name of her father-in-law and after the death of her father-in-law, the name of her husband was entered in the khata extract of the suit property. After the death of husband of defendant No.1, the name of defendant no.1 came to be entered in the property extract of the suit property. The defendant no.1 along with her children are in possession of suit property. In view of death of defendant no.1 during the pendency of this suit, the defendant no.1(d) got himself examined as Dw.1 by filing affidavit and wherein he has reiterated the contents of the written statement of defendant no.1 and got marked Ex.D1 to 21 documents. Ex.D1 and 2 are pertaining to junger No.134 and property no.249, which is the property belongs to the defendant no.1 and the same is not in dispute. Ex.D3 is the certified copy of order passed by the President, Taluk Panchayath in Appeal no.20/11-12 dt: 1-7-11. In Ex.D3 the Taluk Panchayath has set aside the khata made in the name of defendant no.2 and 3 in respect of the suit property and ordered to enter the name of defendant no.1

in the property extract of suit property. Ex.D4 is the copy of MR No.44/2011-12 dt: 17-11-2011 under which the name of defendant no.1 as per the order of Taluk Panchayath vide Ex.D3, is came to be entered in the property extract of the suit property. Ex.D5 is the property extract of suit property, wherein the name of defendant no.1 is shown by bracketing the names of defendant no.2 and 3. Ex.D6 is the letter issued by PDO, D.A. Kere stating that the defendant no.1 is in possession of the suit property. Ex.D7 is the letter issued by the CHESCOM, Bharathi Nagara stating that the husband of defendant no.1 has got electric connection on 8-5-1972 but it is not clear from the said document that whether the said connection is taken to the suit property or not, Ex.D8 is the electricity bill. Ex.D9 to 11 are the applications filed in G.P. Appeal No.20/11-12. Ex.D12 and 13 are the tax paid receipts of the suit property. Ex.D13 is pertaining to the year 2008 and Ex.D12 is pertaining to the year 2011. Ex.D15 is the certified copy of the proceedings of meeting of D.A. Kere Grama panchayath dt: 5-8-2010, wherein the defendant no.1 has given application to the D.A. Kere Grama Panchayath to enter her name to the suit property on the alleged basis of the consent deed executed by defendant No.2 and 3 on her behalf to get her name entered in the khata extract of the suit property. Ex.D16 is the notice given by the D.A. Kere panchayath to the defendant no.2 to appear before it, as he has denied of

having executed the consent deed in favour of defendant No.1 to get her name entered in the suit property. Ex.D17 and 18 are the demand register extracts of suit property. Ex.D19 is the letter issued by the PDO, D.A. Kere grama panchayath stating that there is no record available in their panchayath as to when the name of defendant no.2 and 3 came to be entered in the property extract of suit property. Ex.D20 is the death certificate of Chikkamuddamma i.e. the mother of defendant no.2. and 3. Ex.D21 is the order copy of Taluk Executive Officer made in G.P. Appeal No.41/16 dt: 28-7-16.

17. On perusal of the documents produced by the defendants, it is clear that the name of defendant no.1 for the first time came to be entered in the property extract of the suit property during the year 2011 on the basis of the order passed by the President, Taluk Panchayath, Maddur in G.P. Appeal no.20/2011-12. In the said appeal the khata made in the name of defendant no.2 and 3 in respect of the suit property has been cancelled stating that there is no base for the entry of the name of defendant no.2 and 3. But the President, Taluka Panchayat, Maddur ordered to enter the name of defendant no.1 to the suit property without any base. Therefore, the said order has been set aside in the Zilla Panchayath and ultimately the name of plaintiff came to be entered in the property extract by virtue of the registered sale deed vide Ex.P9 property extract of the suit property.

18. The defence taken by the defendant no.1 and the particulars of the documents produced by them do not substantiate. It is the case of the defendant no.1 that the suit property is their ancestral property and the defendant no.2 and 3 are the strangers to the suit property. If such is the situation then what was the necessity for the defendant no.1 to petition the Grama Panchayath, D.A. Kere to get her name entered to the suit property alleging that the defendant no.2 and 3 have given consent to enter her name in the property extract of the suit property. It is further pertinent to note that Ex.P12 is the Appeal petition of G.P. Appeal no.20/2011-12 filed by the defendant no.1 before the Taluk Panchayath, Maddur against the defendant no.2 and 3 and PDO of D.A. Kere Grama Panchayath. In the said Ex.P12 the defendant no.1 has stated that, she is residing in the suit property since last 50 years and the defendants no.2 and 3 are not at all residing in the said village. Further the mother of defendant no.2 and 3 has permitted the defendant no.1 to use the said suit property. Further on 13-5-1994 the defendant no.1 by paying Rs.5000/- got executed the right transfer deed in respect of the suit property from defendant no.2 and 3. And thereafter put up shed thereon and residing therein. Therefore, the defendant no.1 claims to be the owner of the suit property. So it is clear that the defence setup by the defendants in the written statement and the facts narrated in Ex.P2 and Ex.D15 are not

consonance with each other. Therefore, on the available material on record it cannot be said that the defendant no.1 was and her Lrs are in possession of the suit property. Per contra the documents produced by the plaintiff would go to show that, his vendors were in possession of the suit property and after execution of the sale deed from them, the plaintiff is in possession of the suit property.

19. The defendant no.1 and her Lrs i.e. defendant no.1(a to g) have challenged the khata made in the name of plaintiff in the property extract of the suit schedule property by virtue of the sale deed before the different Revenue Courts. It amounts to interference to the possession of the plaintiff over the suit property. Moreover the Pw.1 and 3 have deposed about the alleged obstruction caused by the Lrs of defendant no.1 to the plaintiff in enjoyment of the suit schedule property. Therefore, I am of the opinion that, the plaintiff has succeeded in proving the alleged interference by the defendants to his possession over the suit schedule property. The plaintiff having proved his possession over the suit schedule property and also having proved the interference by the defendants to his possession over the suit schedule property, as such he is entitled to the relief of permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment

over the suit schedule property. Therefore for the reasons stated above, I answer **Issue no.1 to 3 in Affirmative.**

20. Issue No.4: For the reasons stated while discussing Issue No.1 to 3, I proceed to pass the following ;

ORDER

The suit of the plaintiff is hereby decreed with costs.

The defendants are hereby restrained from interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiff.

Draw decree accordingly.

(Dictated to Stenographer directly on computer, corrected and then pronounced by me in the open court on 25th day of April 2018.)

(A.J. HIRIKUDE)
II ADDL.C.J. & J.M.F.C.MADDUR.

ANNEXURE

1.WITNESSES EXAMINED FOR THE PLAINTIFFS:-

PW1: Nagaraju
PW2: Channappa
PW3: D.K. Nanjundaiah
PW4: Shankar .B

2. DOCUMENTS MARKED FOR THE PLAINTIFFS:-

Ex.P1: Sale Deed
Ex.P2: House/Land Tax Assessment extract
Ex.P3: Assessment register
Ex.P4: House tax list book
Ex.P5 & 6: Tax paid receipts
Ex.P7: Receipt

Ex.P8: Tax paid receipt
Ex.P9: House/Site tax assessment extract
Ex.P10: Property extract
Ex.P11: Photo
Ex.P12: Appeal petition

3. WITNESSES EXAMINED FOR THE DEFENDANTS:-

Dw.1: Mahadevaiah
Dw.2: Kondegowda

4. DOCUMENTS MARKED FOR THE DEFENDANTS:-

Ex.D1: Certified copy of Assessment extract
Ex.D2: House/Land tax assessment extract
Ex.D3: Certified order copy of appeal No.20/11
Ex.D4: Certified order copy issued by Grama Panchayath
Ex.D5: House/Land tax assessment extract
EX.D6: Certified copy of letter issued by Grama
Panchayath
Ex.D7: Certified copy of letter issued by CHESCOM
Ex.D8: Electric Bill
Ex.D9 to 11: Certified order copies of interim applications
Ex.D12 & 13: Two tax paid receipts
Ex.D14: Endorsement
Ex.D15: Certified copy of Resolution
Ex.D16: Certified copy of notice
Ex.D17: House/Land tax assessment extract
Ex.D18: Tax demand register
Ex.D19: Endorsement
Ex.D20: Death certificate of Chikkamuddamma
Ex.D21: Order copy

II ADDL.C.J. & J.M.F.C.MADDUR.