

KABI030035192019



**IN THE COURT OF III ADDL. CIVIL JUDGE & JMFC,  
BALLARI**

**Present: Shri. Sampattakumar P Balolagidad**  
*B.A., LL.B(Special)*

**III Addl. Civil Judge & JMFC, Ballari**

**O. S. No. 694/2019**

**Dated this 24<sup>th</sup> day of November 2021**

**PLAINTIFF:**

Smt.Nagarathnamma W/o Basavaraj, 42 years, R/o Ward No.19,  
House NO.114/A, Ananthapur Road, Patel Nagar, Ballari.

**(By. Shri. H.Mallikarjuna. Adv)**

**// V/s //**

**DEFENDANTS:**

1. Smt.Shanthamma W/o Late.Jalle Eranna, 60 years,
  2. G.Srinivas S/o Late.Jalle Eranna, 35 years,
  3. G.Manjunatha S/o Late.Jalle Eranna, 32 years,
  4. Jalle Malleshappa S/o Jalle Thimmappa, 62 years,
- All are R/o Ward No.16, Near Octroi Gate, Ananthapur Road,  
Patel Nagar, Ballari.

**( EX-Parte)**

|                                               |                                                              |
|-----------------------------------------------|--------------------------------------------------------------|
| Date of Institution of suit                   | 02.12.2019                                                   |
| Nature of suit                                | Declaration and Permanent Injunction                         |
| Date of commencement of recording of evidence | 03.03.2021                                                   |
| Date of Judgment                              | 24.11.2021                                                   |
| Total Duration                                | Year/s    Month/s    Day/s<br>01            11            22 |

### **:JUDGMENT:**

This is a suit for Declaration and Permanent Injunction filed by the plaintiff against the defendants.

#### **2. The brief facts of the plaintiff's case are as under:**

The plaintiff submits that she is absolute owner of the suit schedule property by virtue of registered Will dated 21.04.1999 vide document No.7/1999-2000 executed by her mother Smt.Neelamma. The plaintiff also submits that she was in peaceful possession and enjoyment over the same till today. It is contended that the defendants are trying to interfere and disposes the plaintiff from the suit schedule property. The plaintiff after demise of the testator moved an application before Tahasildhar, Ballari, for effecting the mutation in her name and

the than Tahasildhar issued a notice under Form No.21 K.L.R.Act and within time the defendants raised objections for mutation. The defendants who being the well aware of the said Will without any right, title and interest over the suit schedule property disputing the title of the plaintiff and trespassing into sui schedule property, obstructing peaceful cultivation, possession and enjoyment over the suit schedule property. The defendants even knowing very well that the plaintiff is having title and interest over the suit schedule property, the defendants are making illegal efforts to grab the suit schedule property. Hence, the plaintiff instituted the present suit for the relief of Declaration and Permanent Injunction in respect of suit schedule property against the defendants.

**3.** After registering the suit, summons were issued to the defendants, in pursuance of the same the defendants appeared through their respective counsels but in spite of having given sufficient opportunity they have failed to file their written statement in their defence.

4. The plaintiff in support of her case got examined herself as P.W.-1 and other two witnesses as PW.2 and PW.3 got marked Ex.P.-1 to Ex.P.-8 and closed her side.

5. Heard the arguments.

6. The points which, arise for my consideration are:

**:POINTS:**

***1. Whether the plaintiff proves that she is the absolute owner of the suit schedule property and she is in possession of the suit schedule property?***

***2. Whether the plaintiff further proves that the defendants are interfering with the possession of the plaintiff over the suit schedule property?***

***3. Whether the plaintiff proves that she is entitled to the reliefs as sought for?***

***4. What order or Decree?***

7. My Answers to the above points are as under:

***Point No.1: In the Affirmative***

***Point No.2: In the Affirmative***

***Point No.3: In the Affirmative***

***Point No.4: As per final order for the following:***

**:REASONS:**

**8. Point No.1 to 3:** I take all these points together, because they are inter linked with each other. The plaintiff had filed this suit for Declaration and Permanent Injunction.

**9.** The plaintiff has examined herself as P.W.-1 and has reiterated the facts stated in the plaint. P. W.-1 stated that she is the absolute owner of suit scheduled property by virtue of registered will deed executed by her mother. P.W.-1 to PW.3 further stated that, the PW.1 is in possession of the suit scheduled property from the date of demise of her mother. PW.1 to PW.3 also stated that, the defendants are interfering with the peaceful possession of the plaintiff over the suit scheduled property.

**10.** P.W.-1 in support of her case has produced total 8 documents. Ex.P.-1 is the Original Copy of registered Will deed dt. 21.04.1999, Ex.P.-2 is the Endorsement issued by Tahasildhar. Ex.P.3 is the Computerized ROR for the year 2014-2015 pertaining to Survey No.4/\*/A of Sindhigeri Village, Ex.P.4

is the Computerized ROR for the year 2016-2017 pertaining to Survey No.5/\*/\*A of Sindhigeri Village, Ex.P.5 is the Five Old ROR for the year 2014-2015 pertaining to Survey No.4/\*/\*A of Sindhigeri Village, Ex.P.6 is the Old ROR for the year 2016-2017 pertaining to Survey No.5/\*/\*A of Sindhigeri Village, Ex.P.7 is the Computerized ROR for the year 2014-2015 pertaining to Survey No.4/\*/\*A of Sindhigeri Village, Ex.P.8 is the Computerized ROR for the year 2016-2017 pertaining to Survey No.5/\*/\*A of Sindhigeri Village. The perusal of Ex.P.-1 it reveals that the mother of the plaintiff had executed registered Will deed in favour of plaintiff. The perusal of R.O.R.s on record the said documents indicates that, the description of the suit scheduled property and the description of the property stated in Ex.P.-1 is one and the same.

**11.** The evidence of P.W.-1 to PW.3 have totally remained unchallenged even though suit summons was served on the defendants they did not chosen to file their written statement in their defence. Hence, there are no reasons as such to disbelieve the contentions of the plaintiff.

**12.** I have carefully gone through the pleadings, oral and documentary evidence, adduced by the plaintiffs. On careful perusal of the documentary and oral evidence, the plaintiff has proved that, she is the absolute owner of the suit scheduled property. Plaintiff has also proved that she is in possession of the suit scheduled property and defendants are interfering with the possession of the plaintiff over the suit scheduled property.

**13.** It is relevant to note at this juncture the decision of the Hon'ble High court of Karnataka, in **Shirajasab Hussesansab Exambi V/S Ashok Pandithappa Kaddimani** reported in **1998 KAR 2655** wherein the Hon'ble High court has held that, when the defendants do not appear and the court is satisfied that, summons have been duly served, the court shall pass a decree as prayed for by the plaintiffs unless the relief itself is *prima facie* barred by a limitation or unknown to law. But when it involves or factual allegation, it is not duty of the court to go into such factual allegation and find out whether factual allegations are true or not.

**14.** In view of the ratio laid down by the Hon'ble High court of Karnataka in the above said case and also on the basis of the oral and documentary evidence the plaintiffs have succeeded in proving their case. Therefore, **I answer Point No.1 to 3 in the Affirmative.**

**15. Point No.4:** In the result I proceed to pass the following:

**:ORDER:**

The suit of the plaintiff is hereby decreed.

Plaintiff is declared as absolute owner of the suit scheduled property.

The Defendants are hereby restrained by way of Permanent Injunction from interfering with the possession of the plaintiff over suit schedule property.

Looking to the circumstances of the case the parties are directed to bear their own costs.

Draw Decree accordingly .

**(Directly dictated to Stenographer on computer, transcribed and computerized by her, corrected and signed by me and then pronounced in the open Court on this the 24<sup>th</sup> day of November 2021).**

**(Sampattakumar P Balolagidad)  
III Addl. Civil Judge & JMFC,  
Ballari**

**:ANNEXURE:****LIST OF WITNESSES EXAMINED FOR THE PLAINTIFF:**

P.W.-1: Smt.Nagarathnamma

P.W.-2: G.Siddaiah

P.W.-3: K.Kerekodeppa

**LIST OF DOCUMENTS EXHIBITED FOR THE PLAINTIFF:**

- Ex.P.1 : Original Registered Will deed dt. 21.04.1999
- Ex.P.2 : Endorsement issued by Tahasildhar
- Ex.P.3 : Computerized ROR for the year 2014-2015  
pertaining to Survey No.4/\*/A of Sindhigeri Village
- Ex.P.4 : Computerized ROR for the year 2016-2017  
pertaining to Survey No.5/\*/A of Sindhigeri Village
- Ex.P.5 : Five Old ROR for the year 2014-2015 pertaining to  
Survey No.4/\*/A of Sindhigeri Village
- Ex.P.6 : Old ROR for the year 2016-2017 pertaining to  
Survey No.5/\*/A of Sindhigeri Village
- Ex.P.7 : Computerized ROR for the year 2014-2015  
pertaining to Survey No.4/\*/A of Sindhigeri Village
- Ex.P.8 : Computerized ROR for the year 2016-2017  
pertaining to Survey No.5/\*/A of Sindhigeri Village.

**LIST OF WITNESS EXAMINED FOR THE DEFENDANTS:**

NIL

**LIST OF DOCUMENTS EXHIBITED FOR THE DEFENDANTS:**

NIL

**(Sampattakumar P Balolagidad )  
III Addl. Civil Judge & JMFC, Ballari**