

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.,
H.D.KOTE**

Present: NATARAJ YADAV .S, M.B.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
H.D.Kote

Dated, this the 30th day of January, 2023

O.S.NO. 85/2021

Plaintiff/s :

1. Veenakumari
W/o Late. Sundararajeurs,
Aged about 62 years,
 2. Pavithra Urs
D/o Late. Sundararajeurs,
Aged about 38 years,
R/at No. 160, Prakruthi Layout,
T.Narasipura Main Road,
Mysuru.
 3. M.Mallarajeurs
S/o Late. Madarajeurs,
Aged about 62 years,
R/at Ankanahalli Village,
Malavalli Taluk, Mandya District.
 4. M.Devarajeurs
S/o Late. Madarajeurs,
Aged about 61 years,
R/at Ankanahalli, Malavalli Taluk,
Mandya District.
- Plaintiff no. 1 to 4 represented by their
GPA Holder Deepak urs (Plaintiff no. 5)
5. Deepak urs
S/o Late. Sundararajeurs,
Aged about 41 years,
R/at Prakruthi Layout,
T. Narsipura Main Road, Mysuru.

(By Sh. M.N.Ravishnakar, Advocate)

-V/s-

- Defendant/s :
1. Chikkeurs
S/o Late Krishne urs,
Aged about 80 years,
 2. K.C.Chandrarajeurs
S/o Late Krishne urs,
Aged about 46 years,

Both R/at Kolagala Village,
Hampapura Village, H.D.Kote Taluk.

(By Sh. Manjunath. M., Advocate)

Date of institution of the Suit	:	01.09.2021
Nature of the Suit	:	Recovery of possession
Date of commencement of recording of evidence	:	21.04.2022
Date on which the Judgment was pronounced	:	30.01.2023
Total duration	:	Years /s Month/s Day/s 01 04 29

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote

J U D G M E N T

This is a suit for recovery of possession and damages/mesne profit filed by the plaintiffs in respect of land bearing Sy.no. 67/2 measuring 3.35 acres, situated at Koalagala village, Hampura Hobli, HD Kote (herein after referred to as 'suit property').

2. The facts of the case as set out in the plaint are that the father in law of plaintiff no.1, grandfather plaintiff no.2 and 5 and father of other

plaintiffs namely Madarajeurs was the absolute owner of the suit schedule property having purchased under registered sale deed dated 28.04.1961. Pursuant to the said sale deed, the katha of the suit property was also mutated in his name. It is further stated that the defendant no.1 being the son in law of Maderajeurs had illegally occupied the suit property and got the katha transferred in his name without having any right, title interest over it. As such the husband of plaintiff no.1 namely Sundararajeurs had filed a suit bearing no.280/95 on the file of second Addl. Civil Judge, Mysuru against the defendants herein for the relief of declaration of ownership and recovery of possession. The said suit was hotly contested by the defendants herein and it came to be decreed in part declaring that the Sundararajeurs is owner to the extent of 1/8th share in the suit property being one of the class I heir of Maderajeurs. Both the Sundararajeurs and defendants herein appeals bearing no. 35/2002 and 50/2002 respectively challenging the correctness said judgment and decree before the Fast Track Court II, Mysuru. Both the appeals came to be dismissed vide common judgment on 06.10.2009 and it reached finality as none challenged it and thus it is binding on the parties to the said suit. It is further stated that the defendants had filed a suit bearing no. 352/2012 on the file of Civil Judge & JMFC, H.D.Kote for the relief of permanent injunction against the plaintiffs herein alleging that the plaintiffs are forcibly trying to disposes them the suit property. The said suit came to be decreed with an observation that the defendants are entitled to protect their possession till they are evicted by due process of law by the plaintiff herein. In the said suit and earlier suit the defendants have claimed that they have perfected their title over the suit property by way of adverse possession. However, the same was negated. The

plaintiffs and defendants herein have not preferred appeal challenging the correctness of judgment and decree passed in suit no. 352/2012 and as such it reached finality and binding upon parties to the suit. It is further stated as per the said judgment the plaintiffs repeatedly requested the defendants to handover the vacant and peaceful possession thereof to the plaintiffs but to no avail. According to the plaintiff, since the defendants are unauthorized occupants in respect of the suit property, they are not only liable to hand over the vacant and peaceful possession of the suit property but are also liable to pay damages.

3. Defendants appeared at the initial stages along with counsel and sought time for Written Statement, which though extended, was also not availed as is revealed by the record, and ultimately the defendants who also stopped appearing, was proceeded exparte, and their right to file Written Statement was forfeited and posted the case for plaintiff's evidence.

4. In support of their case, the plaintiff no.5 Sh.Deepak Urus entered into the witness box as PW1. He led evidence on affidavit wherein he supported the averments of the plaint and proved the general power of attorney executed by the plaintiff no.1 to 4 in his favour as Ex.P1, copies of the judgment and decree in suit no.280/1996 wherein the suit filed by the father of the plaintiff no.5 i.e, Sundararjeurus for the relief of declaration of ownership and possession against the defendants herein came to be decreed in part i.e., the relief the declaration of ownership to the extent of 1/8th in the suit property was granted but the relief of possession was declined as Ex.P2 and Ex.P3, copy of the common judgment in appeal no.35/2002 and 50/2002 which was preferred by the

father of the plaintiffs i.e., Sundararjeerus and defendants herein challenging the judgment and decree passed in suit no.280/1996 which reflects that it was dismissed as Ex.P4, copy of the judgment in suit no.352/2012 wherein the suit filed by the defendants herein for the relief of permanent injunction against the plaintiffs herein came to be decreed holding that the defendants herein being in the settled possession are entitled to protect their possession till evicted by due process of law by the plaintiffs herein as Ex.P5 and record of rights of the suit property which reflects that the plaintiffs are owners and possessors of the suit property as Ex.P6.

5. I have heard the counsel for plaintiffs and perused the record carefully.

6. The following points arise for my determination:-

- 1) Whether the plaintiffs are entitled to the relief of possession, as prayed?
- 2) Whether the plaintiffs are entitled for mesne profits? If yes, at what rate and for what period?
- 3) Relief?

7. My findings on the above points are as under:

Point No.1: In the Affirmative

Point No.2: In the Negative

Point No.3: As per final order for the following:-

REASONS

Point No. 1:-

8. The PW deposed that in suit no.352/2012 which was filed by the defendants herein for the relief of permanent injunction against the plaintiffs herein came to be decreed holding that the defendants being in settled possession of the suit property are entitled to protect their possession till evicted by due process of law by the true owners i.e., plaintiffs herein. In view of the said judgment which reached finality and binding on the parties to the suit as no appeal was preferred challenging the correctness of it, the plaintiffs requested the defendants to vacate and hand over the possession of the suit property to the plaintiffs but the defendants failed to do so. The use, possession and occupation of the defendants in the suit property was completely illegal and unauthorized and the defendants are liable to hand over the possession of the same immediately. The above testimony of the PW has remained uncontroverted and unchallenged since the defendants acquired the status of *exparte*. In fact, the plaintiffs have placed on record the copy of judgment dated 28.04.2018 passed by the Ld. civil judge and JMFC in suit no.352/2012 titled as "Chikke Urs and Anr Vs. Veenakumari and Ors." whereby the suit for permanent injunction filed by the defendants herein was decreed holding that the defendants are entitled to protected their possession in respect of suit property till evicted by due process of law by the plaintiffs herein. In view of the unrebutted testimony of the PW and the documents placed and proved on record and in the absence of any evidence to the contrary, it is evident that the plaintiffs are the absolute owners of the suit property and the defendants are entitled to protect their possession till evicted by due

process of law. The PW has deposed that the defendants failed to vacate the suit property despite repeated request made in this regard by the plaintiffs and as such the plaintiffs filed the present suit. In view of the requests/demands by the plaintiffs as per the judgment in suit no. 352/2012 as noted above, it is clear that the defendants do not have any right to use or occupy the suit property and as such the plaintiffs have become entitled to a decree of possession in respect of the suit property as prayed for in the present suit. Accordingly, this point is decided in favour of the plaintiffs and against the defendants in the Affirmative.

POINT No.2

9. Plaintiff has claimed damages/mesne profits but no evidence has been adduced to prove the same nor any document has been filed on record. The affidavit of PW1 is also silent on this point. Therefore, this relief is declined. This point is answered in the Negative.

POINT NO. 3:-

10. In view of my findings on above points, suit is to be decreed in part with costs and I proceed to pass the following:-

ORDER

The suit filed by the plaintiffs is allowed with cost.

A decree of possession is passed in favour of the plaintiffs and against the defendants whereby defendants are directed to hand over the vacant and peaceful possession of suit schedule property to the plaintiffs within two months from today.

Decree Sheet shall be prepared accordingly.

(Dictated to the Stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 30th day of January 2023.)

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote

ANNEXURE**List of witnesses examined by the plaintiff/s:**

PW.1 : Sh. Deepak urs

List of witnesses examined by the defendant/s:

Nil

List of documents marked by the plaintiff/s:

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- Ex.P1 : GPA
- Ex.P2 & 3 : Certified copies of the judgment and decree in OS.no.280/1995
- Ex.P4 : Certified copy of the judgment and decree in RA.no. 5/2001 and 50/2002.
- Ex.P5 : Certified copy of the judgment and decree in OS.no. 352/2012
- Ex.P6 : RTC extract

List of documents marked by the defendant/s:

-Nil-

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote