

KAMS300015072019



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
AND J.M.F.C AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Addl. Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 05th day of February, 2025.

OS No.131/2019

- Plaintiffs: 1. Sri.Afzal Khan, S/o Mustafa Khan @
Pyare Jan, Aged about 45 years,
2. Sri.Amzad Khan, S/o Mustafa Khan
@ Pyare Jan, Aged about 42 years,
3. Sri.Iqbal Khan, S/o Mustafa Khan @
Pyare Jan, Aged about 36 years,

All are residing at D.No.1584, Bazar Road,
Muslim Block, Hunsur Town.

-Vs-

- Defendants: 1. Smt.Anitha, W/o Gajendra,
Aged about 40 years,
2. Smt.Sunitha, W/o Jagadeesha,
Aged about 38 years,
3. Smt.Savitha, W/o Subramani,
Aged about 36 years,
4. Smt.Babitha, W/o Sharavanan,
Aged about 34 years,
5. Sri.Karthik, S/o Jnanadeva,
Aged about 32 years,

Defendants No.1, 2 and 5 are
R/at D.No.578, New Darga Road,

Hunsur Town.

Defendant No.3 is residing at D.No.247,
7th Block, By-pass Road, Gonikoppa,
Virajpet Taluk.

Defendant No.4 is residing at No.4/1,
5th cross, 5th Main, Palace Guttahalli,
Bengaluru.

1.	Provision under which the application is filed	:	Under Order XIV Rule 5 of CPC
2.	Relief sought for	:	Delete issue No.2 and 3
3.	The date on which the application is filed	:	18.09.2024
4.	Number of the application	:	IA No.XVI
5.	The date on which the objection is filed by opponent	:	26.10.2024
6.	The date on which the orders passed on the said application	:	05.02.2025

ORDERS PASSED ON IA NO.XVI

The learned counsel for the plaintiffs filed IA No.XVI under Order XIV Rule 5 of CPC seeking for deletion of issues No.2 and 3.

2. The application is supported with memo of facts stating that, the issues have been framed and the burden of proof lies on the plaintiffs. The 1st issue is with regard to declaration of title of the plaintiffs and issues No.2 and 3 are with regard to proving of relationship of landlord and tenant and termination of oral tenancy under Section 106 of T.P. Act.

The mother of the defendants was tenant of site bearing No.12 wherein a Mangalore tiled godown was constructed in portion of a site constructed by father of the plaintiffs. The defendants went to the extent of denying the title of the plaintiffs over site No.12 in respect of suit 'A' schedule property and also interfering with the possession of suit schedule item 'B' property. Hence, filed the suit for declaration, possession and injunction. As such the question of relationship of tenant and the termination of oral tenancy does not arise. Further, it is not the case of the plaintiffs that they have terminated the tenancy and hence, those issues are irrelevant and not necessary to decide the case. Hence, prayed to allow the application.

3. On the other-hand the learned counsel for defendants No.4 and 5 contended that, the application is not maintainable under law or on facts. In the cross-examination of PW1 he has categorically admitted with respect to facts involved in issue No.2 and 3. The plaintiff has shown malafide intention by filing this application to delete issue No.2 and 3. There is no provision to delete the issue. Hence, prayed to dismiss the application with costs.

4. Thereafter, heard arguments addressed by learned counsels for the plaintiffs and defendants and perused the case papers. After hearing the arguments and on perusal of

the case papers, the points that arise for consideration are as hereunder:

POINTS

1. Whether the plaintiffs have made out sufficient grounds to delete issues No.2 and 3?
2. What order?
5. The findings of the above points are as hereunder:

Point No.1: In the Negative

Point No.2: As per the final order
for the following:

REASONS

6. **Point No.1:** This is the suit the plaintiffs against the defendants seeking the relief of declaration that, they are the absolute owners of suit 'A' schedule property and also prayed for directing the defendants to hand over vacant possession of the suit 'A' schedule property. Further, the plaintiffs have claimed the relief of consequential permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment over 'B' schedule property. They have also sought for mandatory injunction to direct the defendants to demolish the illegal construction of asbestos sheet roofed construction in item No.2 of the suit 'B' schedule property.

7. It is the specific case of the plaintiffs that, they are the absolute owners of the suit schedule property properties and the Khata of the suit schedule property is standing in the name of the plaintiffs. Their parents by name Smt.Wasiya Begum W/o Late Mustafa Khan @ Pyare Jan passed away on 27.02.2004 and their father passed on 13.04.2008. They have purchased the said site under public auction from Town Municipality and they have obtained licence on 15.09.2011 for putting up a compound wall around the suit schedule properties. The plaintiffs father Mustafa Khan @ Pyare jan was doing timber business and sale of cut size timber and for the purpose of stocking timber he has put up a Mangalore tiled godown in a portion of the site No.12 and he was doing business. The plaintiffs continued the business and he could not succeed and he left the said business and the godown was vacant for some time. The 5th defendant and his mother Smt.Jamuna Jnanadeva requested the plaintiffs to let out the godown for them on rent. Since the godown was vacant the plaintiffs let out the godown to the mother of the 5th defendant in the year 2010 under oral tenancy on a monthly rent of Rs.2,000/-. The 5th defendant was very irregular in payment of rents and as such the plaintiffs have terminated the tenancy orally. It is further case of the plaintiffs that, the mother of the 5th defendant and the defendants thought of knocking all the

godown property and they have developed hatred and also tried to interfere and for that reason the plaintiffs have brought the suit.

8. On the other-hand the defendants have appeared through their counsel and file the written-statement. In the written-statement the defendants have categorically denied the case of the plaintiffs. At para No.10 of the written-statement the defendants contended that, they are enjoying of the suit schedule properties for more than 12 years to the knowledge of the plaintiffs from the lifetime of late Mustafa Khan @ PyariJhan and Late Gnyanadev. It is also their case that, father of the defendants purchased the suit schedule properties and constructed Mangaolre tiled house and sheds for the purpose of wood business in the suit schedule property. They have obtained licensee from the Forest Department to run small scale industry under the name of Raghavendra Saw Mills in the suit schedule property and running it since 35 years. It is specifically contended that, the defendants have perfected their title over the suit schedule property by way of adverse possession.

9. On the basis of rival pleadings of the parties on 10.03.2021 this court has framed the issues as hereunder:

1. Whether the plaintiffs prove that, they are the owners of the suit 'A' schedule properties?

2. Whether the plaintiffs prove the relationship of land lord and tenant between the mother of the 5th defendant and themselves?
3. Whether the plaintiffs prove that the alleged oral tenancy has been terminated as contemplated under the provisions of Section 106 of the Transfer of Property Act?
4. Whether the plaintiffs prove that, the defendants have made illegal construction of asbestos sheet roofed construction in the item No.2 of the 'B' schedule properties?
5. Whether the plaintiffs prove that the alleged interference by the defendants in the 'B' suit schedule properties?
6. Whether the defendants No.3 and 5 prove that they have perfected their title over the suit schedule properties by way of adverse possession?
7. Whether the plaintiffs are entitled for the reliefs claimed in the plaint?
8. What order or decree?

10. On the basis of above pleadings and the issues the 1st plaintiff stepped into the witness box and examined himself as PW1. He has got marked totally 11 documents as per Ex.P1 to Ex.P11. On 27.03.2023, and 12.04.2023 PW1 has been cross-examined. On the other-hand the 3rd defendant examined himself as DW1 and when the case was posted for cross-examination of DW1, the plaintiffs came up with this application. The plaintiffs further contended that, there is no pleadings by them about oral tenancy between themselves and the defendant No.5 and his mother and there is no pleadings

about oral termination of the tenancy and as such issue No.2 and 3 which speaks about oral tenancy and oral termination are not at all necessary.

11. It is very important to note that, as already discussed above at para No.3 of the plaint the plaintiffs have specifically alleged that, there is an oral tenancy between themselves and mother of the 5th defendant. It is very important to note that, the plaintiffs have filed the suit for the relief of declaration and vacant possession of the suit schedule properties. It is the burden casted upon the plaintiffs to show that, how the defendants came into possession of the suit schedule property. As such they have pleaded about possession of the defendants on the basis of oral tenancy. Then in the written-statement the defendants have specifically contended that, the father of the defendants purchased the suit schedule properties and they are in possession of the same since 12 years and as such they have perfected their right, title over the property. In the written-statement the defendants have specifically denied para No.3 of the plaint. On the basis of facts pleaded by one party and denied by the other party, this court framed the issue. To prove the possession of the defendants it is very much necessary to prove this issues. The plaintiffs case is that, on the basis of oral tenancy the defendants are in possession of the suit schedule properties.

The issues No.2 and 3 are very much necessary to prove the facts pleaded by the plaintiffs in their plaint. Therefore, this court comes to conclusion that, the plaintiffs have not made grounds to delete issues No.2 and 3. Accordingly, point No.1 is answered in the Negative.

12. **Point No.2:** In view of the reasons discussed above, this court proceeds to pass the following:

ORDER

IA No.XVI filed by the plaintiffs under
Order 14 Rule 5 of CPC is hereby rejected
with costs of Rs.300/-.

(Dictated to the Stenographer, transcribed and computerized
by her on the computer, transcript corrected and pronounced by me
in the open court on this the 05th day of February, 2025)

(Anitha)

Addl. Senior Civil Judge and JMFC.,
Hunsur.