

KAMS310000502012



IN THE COURT OF THE PRL.CIVIL JUDGE AND J.M.F.C.,
AT: HUNSUR

Dated this 31st day of January, 2022

PRESENT

Shri. Basavaraj H. Talawar, B.A., L.L.B.,
Prl. Civil Judge and JMFC, Hunsur.

O.S./384/2012

Between:-

1. Sri. Ramaswamy K.R. S/o. Ramegowda,
Age: 49 years,

2. Sri. Shivanna S/o. Ramegowda,
Age: 47 years,
Both are R/at Kalli Koppalu village,
Bettadapura Hobli, Periyapatna Taluk.

...Plaintiffs

(By Shri. C.S.S., Advocate for plaintiff)

V/s.

1. Smt. Sujatha W/o. Late. Dollegowda ,
Age: 45 years,
R/at Hemmige village,
Hanagodu Hobli, Hunsur Taluk.

...Defendant

(Shri. H.P.L, Advocate for defendant)

3. The brief facts as stated in the plaint:-

The specific case of the plaintiffs that one Sri. Kalegowda S/o Hutchegowda is land less person and he was cultivating an extent of 4 Acres of land in Sy. No. 22 of Hemmige Village which was a gomala land, unauthorisedly by removing jungle growth therein. The said land was semi-polished land more than 60 years ago and he was cultivating the said land by making it fit for cultivation. Several other persons were also cultivating portions of land in Sy. No.22 as unauthorizedly. The said Kalegowda S/o Hutchegowda applied to the government for grant of land cultivated by him unauthorizedly and the Government under proceedings No.GDR 84/56-57, dated 16.01.1957 granted 4 Acres land in Sy. No.22 Block No.6 to the said person for an upset price. Thereafter the land granted to Kalegowda S/o Hutchegowda and other persons were subjected to durasth and a sketch and list of persons in enjoyment of the land in Sy. No.22 was prepared which was approved by The then Tahasildar, Hunsur on 14.10.1959.

4. The plaintiff further stated that, the land in possession of Kalegowda S/o Hutchegowda granted to him was renumbered as Sy. No.68. He continued in possession and enjoyment of the said land as absolute owner. Thereafter, for his legal necessities the said Kalegowda S/o Hutchegowda sold the land in favour of one Gowda Boregowda S/o Thopegowda for valuable consideration under a registered sale deed dated 10.05.1965. He also handed over

possession of the property under the said sale deed. Since the parties were highly ignorants and illiterates the Sy. Number was mentioned as 22 as per the grant certificate and not 68 as per durasth.

5. The plaintiffs further stated that, the said Gowda Boregowda S/o Thopegowda in his legal necessities he was sold the property in favour of Sri. Ramegowda S/o Karigowda, father of the plaintiffs for valuable consideration under a registered sale deed dated . 05.02.1973 and put him in possession of the said property. It was specifically stated in the recitals of the sale deed that the land sold was bearing Sy. No.68 and old Number 22. Sri Ramegowda S/o Karigowda father of the plaintiffs entered possession of the property and he was in peaceful possession and enjoyment during his life time and thereafter the plaintiffs have succeeded to the said property by inheritance and have been joint possession and enjoyment of the same. The plaintiffs further stated that, Ramegowda S/o Karigowda was also an illiterate he did not bother to verify the Revenue Records and get the Khatha changed his name but he continued in possession and enjoyment of the land in Sy. No.68. The index of land, record of rights and other revenue records were entered in the name of Kalegowda which continued in his name alone.

6. The plaintiffs further stated that, some unseen hands played mischief in tampering revenue records, as could be seen from the revenue records produced before this court. Kalegowda S/o Hutchegowda was owner of the land in Sy. No.68 and thereafter Gowda Boregowda S/o Thopegowda and ultimately Ramegowda S/o Karigowda was the absolute owners. But some how the name of Kalegowda S/o Hutchegowda was tampered as Kalegowda S/o Dollegowda at some point of time and it continued for many years. The documents also bear the ensorsements as if Kalegowda S/o Dollegowda had purchase the property in Sy. No.68. The hand written RTC maintained by the Revenue Department reveals that, the lands purchased by Kalegowda S/o Dollegowda was in Sy. No.22/19 and that it is transferred to page No..160 of RTC register. The land granted to Kalegowda S/o Hutchegowda was in Sy. No.22/6 and that it has got nothing to with Sy. No.22/19. That apart the land in Sy. No.22/6 subjected to durasth and was renumbered as 68 and not the lands in Sy. No.22/19. That apart the Revenue Records reveal the name of the Dollegowda S/o Kalegowda entered therein all of a sudden in place of Kalegowda S/o Hutchegowda. Dollegowda S/o Kalegowda has got noting to do with Kalegowda S/o Hutchegowda and he is no way connected with the said land and his name has been entered to Sy. No.68 without any basis. The mistakes committed by the Revenue Officials went unnoticed till the plaintiffs obtained RTC extracts recently. They

could not find their names in the revenue record and panicked by the same. They obtained all the documents right from the date of grant till recently and they could come to know the under committed in tampering the revenue records. Hence the plaintiffs made representation to the concerned authorities but was of no use. Hence, the plaintiffs got issued legal notice dated 04.06.2012 to all the concerned authorities and also to the defendant. The notice was served on all. The Government Authorities neither have replied the notice nor have taken any action in this regard. The defendant who was also served with the legal notice has given an untenable reply. Hence the plaintiffs have constrained to file the present suit.

7. After service of summons, the defendant appeared through her counsel and filed written statement.

8. Brief contention of the written statement of the defendant ;

The defendant denied the plaint averments and contended that, the suit of the plaintiffs is not maintainable under the Law. There is no cause of action to file the present suit. It is further contended that, the land bearing old Sy. No.22 New Sy. No.68 measuring 3 Acre 39 Guntas situated at Hemmige Village, Hunsur Taluk, was originally granted to one Sri. Kalegowda S/o Dollegowda in the year 1957 from the date of grant the ancestors of defendant are all in peaceful possession and enjoyment as a owner. After the death of

original grantee Kalegowda S/o Dollegowda the land was transferred to his son as Pouthi Khatha in the name of Dollegowda S/o Kalegowda. After the death of Dollegowda S/o Kalegowda the defendant is in peaceful possession and enjoyment over the suit schedule property as a owner. The plaintiffs are not entitle any relief. Hence prays to dismissal of the suit with cost.

9. Based on the above said pleadings on record, this court framed the following:

:: ISSUES ::

- 1. Whether the Plaintiffs prove that they are the absolute owners in possession of the suit schedule property?**
- 2. Whether the plaintiffs prove that the Khatha of the suit schedule property wrongly mutated in the name of Kalegowda S/o Dollegowda instead of Kalegowda S/o Huthegowda?**
- 3. Whether the plaintiffs prove that interference of the defendant as alleged?**
- 4. Whether the plaintiffs are entitled to the relief of declaration as sought?**
- 5. Whether the plaintiffs are entitled the relief of permanent injunction as prayed?**
- 6. What order or decree?**

10. In order to substantiate their case, GPA holder to the plaintiffs examined as PW.1 and got marked Ex.P.1 to Ex.P.28. On the other hand the counsel for defendant partly cross examined to PW1 but the defendant not adduced any evidence and not produced any documents on her behalf.

11. I have heard arguments of Shri.CSS, inspite of availing sufficient time the defendant and her counsel failed to appear before the court and not addressed their argument. Hence argument by defendant taken as NIL. Perused the materials on record. My answers to the above said issues are as under:

Issue No.1	:	In the Affirmative
Issue No.2	:	In the Affirmative
Issue No.3	:	In the Affirmative
Issue No.4	:	In the Affirmative
Issue No.5	:	In the Affirmative
Issue No.6	:	As per the final orders

For the following:

:REASONS:

12. ISSUE NO.1 to 3:- These issues are taken together, in order to avoid repetition of facts and for common discussion, since the said issues are interlinked with each other.

13. It is the case of the plaintiffs that the suit schedule property is originally belongs to one Sri. Kalegowda S/o Hutchegowda. The said land was granted by the Government in

favour of the Kalegouda under proceedings No.GDR 84/56-57, dated 16.01.1957. Thereafter Kalegowda S/o Huthegowda and other persons were subjected to durasth and a sketch and list of persons in enjoyment of the land in Sy. No.22 was prepared which was approved by the Tahasildar, Hunsur on 14.10.1959.

14. The plaintiff further stated that, the land in possession of Kalegowda S/o Huthegowda granted to him was renumbered as Sy. No.68. He continued in possession and enjoyment of the said land as absolute owner. Thereafter, for his legal necessities the said Kalegowda S/o Huthegowda sold the land in favour of one Gowda Boregowda S/o Thopegowda for valuable consideration under a registered sale deed dated 10.05.1965. He also handed over possession of the property under the said sale deed. Since the parties were highly ignorants and illiterates the Sy. Number was mentioned as 22 as per the grant certificate and not 68 as per durasth. The said Gowda Boregowda S/o Thopegowda in his legal necessities he was sold the property in favour of Sri. Ramegowda S/o Karigowda, father of the plaintiffs for valuable consideration under a registered sale deed dated 05.02.1973 and put him in possession of the said property. Sri Ramegowda S/o Karigowda father of the plaintiffs entered possession of the property and he was in peaceful possession and enjoyment during his life time and thereafter the plaintiffs have succeeded to the said property by inheritance and have been joint possession and enjoyment of the same. Sri

Ramegowda S/o Karigowda was also an illiterate he did not bother to verify the Revenue Records and get the Khatha changed his name but he continued in possession and enjoyment of the land in Sy. No.68. The index of land, record of rights and other revenue records were entered in the name of Kalegowda which continued in his name alone.

15. The plaintiffs further stated that, some unseen hands played mischief in tampering revenue records, the name of Kalegowda S/o Huthegowda was tampered as Kalegowda S/o Dollegowda at some point of time and it continued for many years. The documents also bear the ensorsements as if Kalegowda S/o Dollegowda had purchase the property in Sy. No.68. The hand written RTC maintained by the Revenue Department reveals that, the lands purchased by Kalegowda S/o Dollegowda was in Sy. No.22/19. The land granted to Kalegowda S/o Huthegowda was in Sy. No.22/6 and that it has got nothing to with Sy. No.22/19. That apart the land in Sy. No.22/6 subjected to durasth and was renumbered as 68 and not the lands in Sy. No.22 /19. That apart the Revenue Records the name of the Dollegowda S/o Kalegowda entered therein all of a sudden in place of Kalegowda S/o Huthegowda. Dollegowda S/o Kalegowda has got noting to do with Kalegowda S/o Huthegowda and he is no way connected with the said land and his name has been entered to Sy. No.68 without any basis. The mistakes committed by the then Revenue Officials went

unnoticed till the plaintiffs obtained RTC extracts recently. They could not find their names in the revenue record and panicked by the same. They obtained all the documents right from the date of grant till recently and they could come to know the under committed in tampering the revenue records. Hence the plaintiffs made representation to the concerned authorities but was of no use. Hence, the plaintiffs got issued legal notice dated 04.06.2012 to all the concerned authorities and also to the defendant. The notice was served on all. The Government Authorities neither have replied the notice nor have taken any action in this regard. The defendant who was also served with the legal notice has given an untenable reply. Hence this suit.

16. In order to prove their case GPA holder of the plaintiffs examined as PW.1 and got marked Ex.P.1 to Ex.P.28. On the other hand the counsel for defendant partly cross examined to PW1 but the defendant did not adduced any evidence and not produced any documents on her behalf. Ex.P1 is the General Power of Attorney, Ex.P.2 is the Index of Lands in respect of R.S. NO.68 of Hemmige Village, Ex.P.3 is the Record of Rights in respect of R.S. NO.68 of Hemmige Village, Ex.P4 is the endorsement given by Deputy Tahasildar, Hanagodu Hobli, Hunsur Taluk, Ex.P5 and 6 are the Record of rights in respect of R.S. No.22 in the year 1975-76 to 1979-80 and 1989-90, Ex.P7 is the Records of rights in respect of RS No.22 in the year 1971-72 to 1974-75. Ex.P8 and 9 are the Records

of rights in respect of RS No.22 of Hemmige Village, Ex.P.10 is the Records of rights in respect of RS No.68 in the year 1995-96 to 1999-2000, Ex.P.11 is Records of rights in respect of RS No.68 of Hemmige Village, Ex.P.12 Certified copy of M.R. NO.75/2005-06, Ex.P.13 is the M.R. No.18/88-89, Ex.P.14 is the application given by Kalegowda, Ex.P.15 is the list of grantees issued by Tahasildar, Hunsur, Ex.P.16 is the direction issued by Assistant Commissioner, Ex.P.17 is the Suvey Sketch in respect of R.S. No.22, Ex.P.18 is the list of grantees issued by Assistant Commissioner, Ex.P.19 is the Grant Certificate, Ex.P.20 is the Sale Deed dt.10.05.1965, Ex.P.21 is the Sale Deed dated 05.02.1973, Ex.P.22 is the Copy of notice dated. 04.06.2012, Ex.P.23 is the reply notice dated 23.06.2012, Ex.P.24 to 28 are the postal acknowledgments.

17. On perusal of the entire material on record the defendant appeared before the court and filed her written statement but not chosen to lead any evidence on her behalf. Further, the defendant partly cross examined to the PW1. In spite of availing sufficient time defendant not cross examined PW1. The oral and documentary evidence adduced by the plaintiffs not challenged by the defendant.

18. On perusal of the documents produced by the plaintiffs it reveals that, The suit schedule property was granted to one Kalegowda S/o Huthegowda which was sold by him in favour of one Gowdaboregowda S/o Thopegowda under the registered sale deed dated 10.05.1965, who in turn sold the said property in favour of

the father of plaintiffs by name Ramegowda S/o Karigowda under the registered sale deed dated 26.02.1972.

19. On perusal Ex.P.19 is the grant certificate issued by Government in favour of Kalegowda S/o Huthegowda under proceedings No.84/56-57 dated 16.01.1957. It is to be specifically noticed that, the land granted is in Sy. No.22/Block 6. On perusal of the Ex.P.15 is the list of persons who have been granted land in Sy. No.22 and Block numbers are also noted therein and the person the granted the land in block No.6 is Kalegowda S/o Huthegowda. On perusal of Ex.P.16 to 18 it is clearly reveals that Sy. No.22 Block No.6 is subjected to Durasth and renumbered as Sy. No.68. On perusal of Ex.P.20 is the registered sale deed dated 10.05.1965 is clearly reveals that, Sri. Kalegowda S/o Huthegowda sold the suit schedule property in favour of Gowdaboregowda S/o Thopegowda , Ex.P.21 is the registered sale deed dated 05.02.1973 under which Sri. Gowdaboregowda S/o Thopegowda alongwith his sons sold the suit property in favour of father of the plaintiffs by name Ramegowda S/o Karigowda. According to sale deed dated.05.02.1973 the father of the plaintiffs is in possession and enjoyment over the suit schedule property. After the death of father of the plaintiffs, the plaintiffs are in possession and enjoyment of the suit schedule property. Admittedly the defendant has not produced any document to show her ownership and possession over the suit schedule property.

20. On perusal of the entire material on record The defendants have taken the contention that the land bearing old Sy. No.22 New Sy. No.68 measuring 3 Acre 39 Guntas situated at Hemmige Village, Hunsur Taluk, was originally granted to one Sri. Kalegowda S/o Dollegowda in the year 1957 from the date of grant the ancestors of defendant are all in peaceful possession and enjoyment of the property as a owner. After the death of original grantee Kalegowda S/o Dollegowda the land was transferred to his son as Pouthi Khatha in the name of Dollegowda S/o Kalegowda. After the death of Dollegowda S/o Kalegowda the defendant is in peaceful possession and enjoyment over the suit schedule property as a owner. but the defendant not produced any documents to prove their contention stated in the written statement. Therefore the contention taken by the defendant is not sustainable. Admittedly, defendant appeared through her counsel and filed written statement, but not adduced any evidence to prove her contention stated in the written statement. Even though during the cross examination of PW 1 he has stood well in the test of cross examination. There is nothing in the cross examination to disbelieve the evidence of PW1. On perusal of the documents produced by the plaintiffs i.e., Ex.P-1 to 28, are fully corroborated evidence of PW1. Thus the evidence of PW1 and the documents produced by the plaintiffs fully supported their contention. Therefore oral and documentary evidence adduced by the PW1 clearly goes to show that plaintiffs are absolute owners in

possession of the suit schedule property and also proved that, the Khatha of the suit schedule property wrongly mutated the name of Kalegowda S/o Dollegowda instead of Kalegowda S/o Huthegowda and also proved that, the defendant interfere with the peaceful possession of the plaintiffs over the suit schedule property. Hence, the court proceed to answered issue No.1 to 3 in the **Affirmative**.

21. **Issue No.4 and 5:-** Both issues are taken together, in order to avoid repetition of facts and for common discussion, since the said issues are interlinked with each other.

22. The Plaintiffs have filed the present suit seeking relief of declaration that they are the joint owners of the suit schedule property and also claiming permanent injunction against the defendant. Considering the pleadings and evidence on record, the court has already held the view that the Plaintiffs have succeeded in proving Issue No.1 to 3. In order to avail the relief of Declaration and Permanent Injunction, the Plaintiffs have established their ownership and factum of possession and alleged interference over the suit schedule property by the defendant. In view of the Affirmative findings on Issue No.1 to 3, the court is of the opinion that the Plaintiffs are entitled for the declaration and discretionary equitable relief of Permanent Injunction and accordingly, **the court proceeds to answer Issue No.4 and 5 in the Affirmative.**

23. **ISSUE No.6:-** In view of the above said findings on Issue No 1 to 5 , the court proceeds to pass the following:

ORDER

The suit of the Plaintiffs is hereby decreed with cost.

In the result plaintiffs are declared that, they are joint owners of the suit schedule property.

The defendant is hereby restrained from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit schedule property.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed and typed by her and corrected by me and then pronounced in the open Court on this 31st day of January, 2022)

(Basavaraj. H. Talawar)
Prl. Civil Judge and JMFC,
Hunsur.

ANNEXURE**The list of witnesses examined on behalf of the plaintiff/s.**

P.W.1 - Ramegowda

The list of witnesses examined on behalf of the defendant/s

- NIL -

The list of documents exhibited on behalf of the plaintiff/s

Ex.P.1 - GPA
 Ex.P.2 - Index of Land
 Ex.P.3 - Record of rights
 Ex.P4 - Endorsement issued by Tahasildar
 Ex.P5 to 9 - Certified copy of 5 RTCs
 Ex.P10 - Record of Rights
 Ex.P11 - RTC
 Ex.P12 - Mutation Register
 Ex.P13 - Certified copy of Mutation Register,
 Ex.P14 - Certified copy of the application
 Ex.P15 - List of Beneficiary
 Ex.P16 - Direction letter of Asst. Superintendent
 Ex.P17 - Sketch of Sy. No. No.22
 Ex.P18 - List of Beneficiary
 Ex.P19 - Grant Certificate
 Ex.P20 - Sale Deed dt.10.05.1965
 Ex.P21 - Sale Deed dt.05.02.1973
 Ex.P22 - Office copy Legal Notice
 Ex.P23 - Reply Notice
 Ex.P24 -28 - Postal acknowledgement 5 Nos.

The list of documents exhibited on behalf of the defendant/s

- NIL -

(Basavaraj. H. Talawar)
Prl. Civil Judge and JMFC,
Hunsur.