

KAMS410016022022



Form No. 9
(Civil) Title Sheet
for Judgment in
suits (R P Q1)

GOVERNMENT OF KARNATAKA
TITLE SHEET FOR JUDGMENT IN SUITS

**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC.,
AT K.R.NAGARA**

Dated this the 27th day of January 2024

PRESENT:- SMT. PAVITHRA R., B.A., L.L.B.,
Prl. Civil Judge and JMFC.,
K.R.Nagara

O.S.NO.179/2022

PLAINTIFF:

Smt.Janakamma
W/o Shivannegowda,
D/o Late Boregowda
Aged about 60 years,
R/at Moodalabeedu Village,
Saligrama Hobli,
K.R. Nagar Taluk,

(Rep. by Sri.M.C.S., Advocate)

-VS-

DEFENDANTS: 1.

Smt.Boramma W/o Ningegowda,
D/o Late Boregowda,
Aged about 62 years,
R/at Melur Village,
Mirle Hobli,
K.R. Nagar Taluk.

2.

Smt. Nagamma W/o Krishnegowda
D/o Late Boregowda,
Aged about 58 years,

3.

Smt.Gowramma W/o Muddegowda
D/o Late Boregowda
Aged about 56 years,

Defts.2 & 3 R/at
Mundoor Village,
Saligrama Hobli,
K.R.Nagar Taluk,

4. M.R.Muttuprasad
S/o M.B. Ramesh
Deft.No.4 is minor
R/by his father
M.B. Ramesh S/o Boregowda,
Aged about 45 years,
Moodalabeedu Village,
Saligrama Hobli,
K.R. Nagar Taluk,

(D1 to 3 – ex parte)
(D4 by Sri.M.R.R. Advocate)

Date of institution of the suit	:	04-04-2022
Nature of the suit	:	Declaration, Rectification & Injunction
Date of the commencement of Recording of the evidence	:	22-06-2023
Date of which the judgment was Pronounced	:	27-01-2024
Total Duration	:	Year Months Days 01 09 23

(PAVITHRA R)
Prl. Civil Judge & JMFC,
K.R.Nagara.

JUDGMENT

This is a suit filed by the plaintiff for the relief of declaration to declare her as an absolute owner of suit schedule property, to declare Gift Deed got executed by defendant no.4 on 12-03-2019 as void, and for rectification of suit schedule property bearing Sy.No.17/11 as 17/4 measuring 1Ac-20³/₄ Guntas in sale deed dated 18.07.1942 and consequential relief of permanent injunction and such other reliefs.

2. The brief facts of the plaint are as follows:

That the plaintiff is the owner of suit schedule property bearing Sy.No.17/4 measuring 1Ac-20 ³/₄ Guntas situated at Moodalabeedu village, Saligrama Hobli, K.R. Nagar Taluk, Mysuru District bounded on East – Land of Dondwana Kariyana and others, West – Land of Ningegowda, North – Land of Boramma and South – Land of Nagendra. Originally suit schedule property was purchased by her father Boregowda S/o Kempegowda from one Boregowda S/o Kengegowda under the sale deed dtd.18-07-1942 and payed tax. At the time of purchase, the vendor of suit schedule property wrongly mentioned survey number as 17/11 instead of Sy.No.17/4. From the

date of purchase the father of plaintiff was in possession of Sy.No.17/4 and accordingly katha has been changed in the name of plaintiff and father of defendants no.1 to 3. That during his life time the father of plaintiff and defendants no.1 to 3 has orally partitioned the ancestral property and the property of the family among plaintiff and defendants no.1 to 3 and the suit schedule property fell into the share of plaintiff and she has been in possession of suit schedule property and raising Ragi, Jowar etc crops and eking out his livelihood. That the taking advantage of illiteracy of plaintiff, the defendant no.4 got executed Gift Deed on 12-03-2019 in respect of suit schedule property colluding with revenue officials and defendants no.1 to 3. The defendants forcing plaintiff to transfer suit schedule property in their favour and on 3-1-2022 defendants started giving trouble. In spite of advise from the elders and panchayat members, neglecting their advise, the defendants are interfering into the peaceful possession and enjoyment of the suit schedule property. When this being the case the plaintiff approached Tahsildar, K.R. Nagara to change the katha in his name, in turn the Tahsildar has directed him to get

declaration from the Court. Hence plaintiff filed this suit for the above reliefs.

3. On service of suit summons, the defendants no.4 appeared through his learned counsel. However he has not filed any written statement. In spite of service of summons on defendants no.1 to 3 remained absent and placed ex parte.

4. In order to prove the case of the plaintiff, plaintiff, plaintiff herself got examined as Pw.1 and produced 4 documents which are marked as Ex.P1 to P4. Recording absence of defendants and their counsel, cross-examination of PW.1 is taken as nil.

5. Heard the arguments of counsel for plaintiff and perused the documents available on record.

6. The following points would arise for consideration of the Court:

- 1) Whether the plaintiff proves that, she is absolute owner and in peaceful possession and enjoyment over the plaint schedule property?
- 2) Whether the plaintiff proves that, the defendants are interfering with his peaceful possession and enjoyment over the plaint schedule property?

- 3) Whether the plaintiff is entitled for rectification of sale deed as prayed for?
- 4) Whether the plaintiff is entitled for declaration of Gift Deed got executed by defendant no.4 as null and void?
- 5) What Order or Decree?

7. Findings 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: | In the affirmative |
| Point No.5: | As per the final order
for the following: |

REASONS

8. Point No.1 to 4:- As these points are interconnected to each other, I have taken these points together for common discussion to avoid the repetition of the findings and facts of the case.

9. The present suit is filed for declaration to declare him as absolute owner of suit schedule property, to declare Gift Deed got executed by defendant no.4 on 12-03-2019 as void and for rectification of suit schedule property bearing Sy.No.17/11 as 17/4 measuring 1Ac-20 $\frac{3}{4}$ Guntas

and consequential relief of permanent injunction restraining the defendants and anybody on their behalf from interfering with the plaintiff's peaceful possession and enjoyment of the plaint schedule property. In order to substantiate the case of plaintiff, he got examined himself as Pw.1 and produced 9 documents as Ex.P1 to P4 and relied on the following documents.....

- (i) Ex.P1 is the certified copy of sale deed dtd.18-7-1942 executed by Boregowda S/o Kengegowda in favour of Boregowda S/o Kempegowda in respect of Sy. No. 17/11 to an extent 1 acre 20 $\frac{3}{4}$ guntas.
- (ii) Ex.P2 is the Encumbrance Certificate showing alienation of property bearing Sy. No. 17/11 to an extent 1 acre 20 $\frac{3}{4}$ guntas vide Ex.P1.
- (iii) Ex.P3 is the sketch of Sy.No.17/4.
- (iv) Ex.P.4 is the certified copy of mutation register.
- (v) Exs.P.5 and 6 are the handwritten RTC with respect to Sy.No.17/4 measuring 3As-14Guntas for the year 1981-82 to 1987-88 standing in the name of Boregowda S/o Kempegowda to an extent of 1Ac-20 $\frac{3}{4}$ Guntas through MR 3/1982-83.
- (iv) Ex.P7 is the computerised RTC of Sy.No.17/4 measuring 3As-20Gs for the year 2021-22 standing in the name of defendant no.4. through MR No.H-19/2018-19 vide Gift.

- (v) Ex.P.8 is the certified copy of sale deed dtd.14-7-1942.
- (vi) Ex.P.9 is the Nil encumbrance certificate.

10. The PW1 in his chief examination has reiterated entire plaint averments. PW1 is not cross-examined by the counsel for defendant No.4.

11. On looking into the evidence of PW1 and contents of Ex.P1 to P9 it clearly goes to show that, the averments made in the evidence of PW1 are clearly substantiated by contents of the documents. From Ex.P1 and 2 it is clear that Kengegowda S/o Boregowda executed sale deed in favour of Kempegowda S/o Boregowda on 18-7-1942 in respect of Sy. No. 17/11 to an extent 1 acre 20 $\frac{3}{4}$ guntas. But all the revenue documents Ex.P3 to 6 reveals that the Kempegowda and his successors that is Boregowda and his daughter present plaintiff is in possession over the Sy. No. 17/4 to an extent 1 acre 20 $\frac{3}{4}$ guntas. As per Surveyor stated the plaintiff is in possession of No. 17/4 to an extent 1 acre 20 guntas and not in Sy. No. 17/1183/3 situated at Mavathuru village in respect of which the defendants no.1 and 2 have executed sale deed in favour of plaintiff. So plaintiff requested defendants no.4 to get rectified the

Sy.No.17/11 as Sy. No. 17/4. Ex.P9 reveals that no alienation is made by the plaintiff in respect of plaint schedule property till date. Subsequently defendants are interfering with the plaintiff's possession who has obtained the plaint schedule property during partition in her family as a legal heir of Kempegowda S/o Boregowda. Meanwhile defendant No.1 being the legal heir of Kengegowda S/o Boregowda has gifted plaint schedule property in favour of defendant No. 4. Defendants are the legal heirs of Kengegowda S/o Boregowda who had executed Ex.P1 in which Survey number is wrongly written as 17/11 instead of 17/4. The 4th defendant colluding with defendants no.1 to 3 got obtained the change of katha in as per Ex.P7. The survey sketch clearly shows that the plaintiff is in possession over Sy. No. 17/4. It is apparent on record tat the ancestor of the defendants Kengegowda has executed Sy. No. 17/4 with extent and boundaries as mentioned in plaint schedule by mentioning wrong survey number as 17/11 instead of 17/4. Hence plaintiff is entitled for the relief of rectification of sale deed dtd. 18.07.1942 against the defendants to **insert Sy.No.17/4 instead of Sy.No. 17/11 and also for declaration of gift deed dated**

12.03.2019 executed by defendant No. 1 in favour of defendant No.4 as null and void. That the defendants by virtue of wrong entries are interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. By virtue of Ex.P1, 7 and 9 and other possession documents discussed supra, title and possession of the plaintiff is well established.

14. In this suit, though, in spite of service of summons and sufficient opportunity defendant No. 1 to 3 have failed to appear before the court, defendant No.4 though appeared has failed to contest the matter either by filing the written statement or by cross examining the PW1. Thus, it clearly discloses that, defendants have not challenged the contention of the plaintiff and contents of the documents by adducing any contra evidence or by producing any documents on their behalf. There is no contra evidence or documents to disbelieve the contention taken by the plaintiff. The title of the plaintiff is based on the sale deed and subsequently by virtue of oral partition and the same is evident from Ex.P1 to 6 and 9. The ownership and the possession of the plaintiff is established

and proved by the plaintiff by producing above documents and pleadings. Therefore, it clearly shows that, plaintiff is the absolute owner of the plaint schedule property. Since, the defendants have not contested the suit, there is no ground to disbelieve the contention of the plaintiff with regard to interference by the defendants in respect of the plaint schedule property. Hence, plaintiff have rightly filed this suit for declaration, rectification of sale deed and permanent injunction and she is entitled to the relief sought. In the above facts and circumstances of the case, the Court is of the opinion that, plaintiff has proved the point No.1 to 4 to the satisfaction of this Court. Hence, the Court answers points No.1 to 3 in the affirmative.

15. Point No.4:- For the foregoing reasons, discussion and findings to the above points, the Court proceeds to pass the following:-

ORDER

The suit of the plaintiff is hereby decreed with costs.

Accordingly, plaintiff is declared as the absolute owner of the plaint schedule property.

Defendants are directed to execute rectification of sale deed dated 18.07.1942 in favour of the plaintiff within 60 days from the date of this order, failing which the plaintiff is at liberty to apply for execution of this order.

Gift deed dated 12.03.2019 executed by defendant No. 1 in favour of defendant No. 4 in respect of plaint schedule property with respect to Sy. No. 17/4 is declared as null and void.

Defendants and anybody on their behalf are hereby restrained from interfering with the plaintiff's peaceful possession and enjoyment over the plaint schedule property, by way of permanent injunction.

Draw decree accordingly.

(Dictated to Stenographer directly on computer, revised, corrected, signed and then pronounced by me in the open court on this the 27th day of January 2024)

(PAVITHRA.R)

Prl. Civil Judge & JMFC,
K.R.Nagara.

A N N E X U R E

1. List of witnesses examined for the plaintiff:

PW.1 : Janakamma

2. List of witnesses examined for the defendants:

- Nil -

3. List of documents exhibited for the plaintiff:

- Ex.P.1 : Certified copy of sale deed dtd.18-7-1942
- Ex.P2 : Encumbrance Certificate
- Ex.P3 : Sketch of Sy.No.17/4.
- Ex.P.4 : Certified copy of mutation register.
- Exs.P.5 & 6 : Handwritten RTCs
- Ex.P7 : Computerized RTC of Sy.No.17/4
- Ex.P.8 : Certified copy of sale deed dtd.14-7-1942.
- Ex.P.9 : Nil encumbrance certificate.

4. List of documents exhibited for the defendants:

- Nil -

(PAVITHRA R)

Prl. Civil Judge & JMFC,
K.R.Nagara.

(Judgment pronounced in the Open Court
Vide separate Judgment)

ORDER

The suit of the plaintiff is hereby
decreed with costs.

Accordingly, plaintiff is declared as the
absolute owner of the plaint schedule
property.

Defendants are directed to execute
rectification of sale deed dated 18.07.1942
in favour of the plaintiff within 60 days
from the date of this order, failing which the
plaintiff is at liberty to apply for execution of
this order.

Gift deed dated 12.03.2019 executed
by defendant No. 1 in favour of defendant
No. 4 in respect of plaint schedule property
with respect to Sy. No. 17/4 is declared as
null and void.

Defendants and anybody on their
behalf are hereby restrained from interfering
with the plaintiff's peaceful possession and
enjoyment over the plaint schedule property,
by way of permanent injunction.

Draw decree accordingly.

(PAVITHRA R)

Prl. Civil Judge & JMFC,
K.R.Nagara.