

IN THE COURT OF PRL. CIVIL JUDGE & JMFC.,
KRISHNARAJANAGARA

PRESENT

Smt, Gayatri, B.Com., L.L.M., (IPR)
C/c Prl. Civil Judge & JMFC, Krishnarajanagara.

Dated 20th day of August 2020

OS No. 393/2015

PLAINTIFF : Lakshme Gowda
S/o Late Annegowda,
Aged about 70 years,
R/at Bherya Village,
Hosa Agrahara Hobli,
K.R.Nagar Taluk.

[By: Sri. M.S.M., Advocate]

-V/s-

DEFENDANT : Krishne Gowda, Dead by LR's

1. Lakshamma W/o late Krishne Gowda,
Aged about 55 years,
2. Jagadeesha S/o late Krishne Gowda,
Aged about 40 years,
3. Dinesha S/o late Krishne Gowda,
Aged about 35 years,
4. Shobha S/o late Krishne Gowda,
Aged about 33 years,

All are R/at Bherya Village,
Hosa Agrahara Hobli,
K.R.Nagar Taluk, Mysuru District.

[D1 to 4 By: Sri. J.G., Advocate]

Date of Institution of the suit	17-08-2015		
Nature of the suit	Declaration and Injunction		
Date of the commencement of recording of the evidence	21-07-2017		
Date on which the judgment was pronounced	20-08-2020		
Total Duration	Years	Months	Days
	05	00	03

(Gayatri)
C/c Prl. Civil Judge & JMFC.,
K.R.Nagar.

JUDGMENT

The plaintiff has filed the present suit against defendants for the relief of declaration, permanent injunction and for costs.

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

Plaintiff submits that he is the absolute owner in possession of land bearing Sy.No. 146 measuring 0.15 guntas situated at Bherya Village behind Bananthamma Devarakere, Hosa Agrahara Hobli, K.R.Nagar Taluk by virtue of registered sale deed dated 06-01-1998.

3. He further submits that his vendor Mr.D.Rama Swamy was the owner of agricultural wet land bearing Sy.No. 146

measuring 1.22 acres out of which 0.15 guntas was sold to plaintiff, similarly he sold 15½ guntas to one Mr. Shivappa S/o late. Chikke Gowda @ Heggore Gowda, 0.15 guntas to Mr. Dodde Gowda S/o late. Mr. Anne Gowda, another 7½ guntas to one Mr. Subbe Gowda S/o late. Mr. Anne Gowda etc.

4. He further submits that father of the defendant No.2 to 4 and husband of 1st defendant Sri. Krishne Gowda filed a suit against him on the file of this court in O.S. 232/1999 for the relief of permanent injunction which came to be decreed in favour of Krishne Gowda. Later, he preferred Regular Appeal in R.A. No. 202/2007 which came to be dismissed.

5. He further submits that since the fact of purchase of suit schedule property by him from his vendor he is in absolute possession without any interference from anybody. In the above mentioned suit decree was obtained by Krishnegowda by virtue of concocted documents.

6. He further submits that when late. Krishnegowda interfered into his peaceful possession and enjoyment of the suit schedule property he approached revenue authorities for spot inspection as such Deputy Commissioner Mysuru and Assistant Commissioner Hunsur sub division have directed the Tahsildar K.R.Nagar to inspect the spot and submit report.

In pursuance to same Tahsildar submitted report dated 10-01-2013.

7. He further submits that as per report submitted by Tahsildar dated 10-01-2013 his possession over 0.15 guntas of land in Sy.No.146 was reported. At later stage, Assistant Commissioner directed Tahsildar as such Tahsildar issued an endorsement to plaintiff and defendants to get their dispute adjudicated before competent Civil Court.

8. He further submits that he was suppose to file suit immediately against late. Krishne Gowda. But, he was unwilling to drag his widow and children's before court of law so as to trouble them after his demise. At later stage, when all the efforts made by him so as to stop interference from defendants, left with no other option has filed the present suit against LR's of late. Krishnegowda.

9. Per contra in pursuance to the suit, suit summons to defendants were issued though they appeared through counsel but have not filed their written statement.

10. Plaintiff has examined himself as PW-1 and produced 10 documents got them marked as Ex.P1 to 10. The matter was posted for arguments since from 27-07-2018. After giving

sufficient time and opportunity by this court neither the plaintiff appeared nor the learned counsel appearing for plaintiff put forth his representation to proceed with the matter. This court reserving the right of plaintiff to file his written arguments has posted the matter for judgment. Defendants have not filed written statement no defendant side evidence.

11. In view of the pleadings and materials available on record the following points arise for consideration of this court:

1. Whether the plaintiff proves that he is the absolute owner in possession of the suit schedule property as alleged by him?

2. Whether the plaintiff further proves interference from defendants?

3. Whether plaintiff is entitled for the relief of declaration and permanent injunction as prayed for?

4. What order or decree?

12. In spite of sufficient time and opportunity neither plaintiff nor counsel appear to adduce oral or written arguments. Hence, arguments of plaintiff taken as nil. As defendants not filed written statement no defendant side

arguments. This court's findings on the above points are as follows:

Point No.1 : In the Negative
Point No.2 : In the Negative
Point No.3 : In the Negative
Point No.4 : As per final order
for the following:

: REASONS :

13. POINT NO.1:

In respect of the present suit, plaintiff has examined himself as PW-1 by filing his affidavit in lieu of examination in chief and produced 10 documents got them marked as Ex.P1 to 10. Ex.P1 is the RTC, Ex.P2 is the report submitted by Tahsildar to Assistant Commissioner Hunsur dated 10-01-2013, Ex.P3 is the copy of RRT No. 654/2012-13 dated 24-02-2013, Ex.P4 is the endorsement issued by Tahsildar dated 15-07-2013, Ex.P5 is the sketch, Ex.P6 is the certified copy of sale deed dated 13-09-1997, Ex.P7 is the hand written RTC, Ex.P8 is the encumbrance certificate, Ex.P9 and 10 are the Index of lands and Records of Rights.

14. PW-1 has reiterated all those averments made by him in his plaint in his affidavit. On perusal of the entire documents produced by him it goes to show that at no point of time immediately after the fact of purchase of the suit schedule property he was in possession of the entire extent of land as

alleged by him. It is only during the year 2004-05 by virtue of MR 31/2004-05 he was in possession of 0.15 guntas land in the said survey number.

15. As per the Ex.P2 it is clear that plaintiff is in possession of land to an extent of 0.07.08 guntas land in Sy.No. 146/1 and as per the documents produced by him i.e., Ex.P5 it is very much clear and goes to show that plaintiff purchased the suit schedule property through a registered sale deed dated 06-01-1998. As per his contentions in his plaint it is clear that it was the sale deed dated 06-01-1998 by virtue of which he become owner in possession of the suit schedule property. But, on record the pleadings and documents are entirely contra. Ex.P6 is the certified copy of the registered sale deed dated 13-09-1997 which is much prior to the plaintiffs sale deed as such this version and say of the plaintiff as to sale deed dated 06-01-1998 being contra cannot be believed. Moreover, the documents produced by him in the present suit are against the plaintiff's interest which lacks clarity to hold that he is in possession of the entire land to an extent of 0.15 guntas as such he has failed to discharge the burden casted upon him.

16. Plaintiff in the present suit has not taken the pain to produce the original sale deed for perusal of this court. He

has not made any utterance as to where about the original sale deed in respect of the suit schedule property. Hence, without further discussion this court proceeds to answer this point accordingly.

17. POINT NO.2:

As point No.1 has been answered in negative when plaintiff has failed to prove his title and to show that he is in possession of entire extent of 0.15 guntas land in the said survey number this court cannot barely presume that defendants are causing interference to his possession over the suit schedule property. However, it is true that plaintiff is in possession of land to an extent of 0.07.08 guntas. But, he has failed to discharge the initial burden casted upon him as the documents are not clear. This court without further discussion proceeds to answer this point accordingly.

18. POINT NO.3:

When Point No.1 and 2 has been answered in negative, this court holding that plaintiff is not entitled for the suit relief as prayed by him. Hence, proceed to answer this point accordingly.

19. POINT NO.4:

In view of the above discussions and the reasons stated therein this court proceeds to pass the following:

ORDER

The suit of the plaintiff is hereby dismissed.

Parties to bare their own cost.

Office to draw decree accordingly.

[Dictated to the Steno, transcribed by her and corrected by me and pronounced in the Open Court this the 20th day of August 2020]

(Gayatri)
C/c Prl. Civil Judge & JMFC.,
K.R.Nagar.

A N N E X U R E**1. List of witnesses examined for plaintiff:-**

PW.1 : Lakshme Gowda

2. List of documents marked for plaintiff :-

Ex.P1 – Record of rights
Ex.P2 – Report Issued by Tahsildar
Ex.P3 – Letter dated 24-02-2013
Ex.P4 – Endorsement
Ex.P5 – Survey Sketch
Ex.P6 – CC of Sale deed
Ex.P7 – R.T.C.
Ex.P8 – Encumbrance Certificate
Ex.P9 – Index of Lands
Ex.P10 – Record of Rights

3. List of witnesses examined for Defendant:- NIL

4. List of documents marked for Defendant:- NIL

(Gayatri)
C/c Prl. Civil Judge & JMFC.,
K.R.Nagar.