

KAMS510027022013



**IN THE COURT OF THE II ADDL. CIVIL JUDGE &
JMFC, NANJANGUD: AT NANJANGUD**

Present : **Smt.Vinutha.D.S.**, B.Sc.(Seri), LL.B.,
II Addl. Civil Judge & JMFC.,
Nanjangud.

Dated 02nd day of March, 2022

O.S No.439/2013

Plaintiff : Mahadevaiah,
S/o Madaiah,
Aged about 44 years,
R/at door No.25, 2nd Cross,
Panchayathi Hall Road,
Kyathamaranahalli,
Mysore City.

[By Sri. H.N.M. Adv]

V/S

Defendants: 1 Mahadevamurthy,
S/o late Madaiah,
Aged about 65 years,
2 Mahadevamma,
w/o Mahadevamurthy,
Aged about 58 years,
3 Mahesha,
S/o Mahadevamurthy,
Aged about 35 years,
All are R/at Chunchanahalli village,
Kalvalande Hobli, Nanjangud Taluk.

[By Sri. M.S. Adv]

Date of Institution of the Suit	26.07.2013
Nature of the Suit (Suit on Pronote, on declaration and possession and on for injunction etc.,)	Suit for Permanent Injunction
Date of the commencement of recording of the evidence	22.11.2014
Date on which the Judgment was pronounced	02.03.2022
Total Duration	Year/s Month/s Day/s 08 07 07

(Vinutha D.S.)
II Addl. Civil Judge & JMFC,
Nanjangud.

-: J U D G M E N T:-

This is suit for permanent injunction.

2. The description of suit schedule property is as under :-

The house and vacant site bearing property No.218 and Janjnder No.218, situated at Chunchanahalli village, Devanuru Grama Panchayath, Kavalande Hobli, Nanjangud Taluk, measuring East to West 80 ft, North-South 55 ft, and bounded on :

East by : House of Nanjaiah

West by : Vacant site belongs to defendants and

one Marigandaiah

North by : Vacant site belongs to Nanjaiah

South by : House belongs to Marigandaiah

3. **Brief facts of the plaintiff's case are as under:-**

The plaintiff is the absolute owner and in possession of the suit schedule property past 15 years. Suit schedule property being basically vacant site, originally belonged to the grandfather of the plaintiff who had been in possession and enjoyment of it. After the death of his grandfather, the suit schedule property fell to the share of plaintiff's father in an oral partition which had took place about 35 years back. Thereafter, the suit schedule property was fallen to the share of plaintiff in an oral partition effected in the family. Since then, the plaintiff has been in actual possession and enjoyment of the suit schedule property. However, the khatha of the suit schedule property is still continuing in the name of his grandfather. But plaintiff is paying taxes to the suit schedule property regularly in the name of his grandfather. The plaintiff is absolute owner and in exclusive possession of the suit schedule property. When such is the case, the defendants having no any right or title or possession over the suit schedule property are interfering in his peaceful possession over suit schedule property on 30.06.2013, the defendants tried to encroach the vacant site on the western side of the suit property and also they tried to dig in the vacant site to put the foundation. This defendants

tried to encroach vacant site on western side of the suit schedule property. The plaintiff resisted the illegal activity of the defendants but in vain. The defendants continued their interference. On 02.07.2013 at about 02.00 PM the defendants all together came near the suit schedule property and tried to digup the vacant site on the western side of the property. The plaintiff lodged complaint against the defendants before the jurisdictional police. The police have issued NCR in 18/2013, dated 02.07.2013. The defendants are economically sound and also influential persons. It is very difficult for the plaintiff to resist their illegal act. Having no other option left, plaintiff has approached this court by filing this suit seeking the relief of permanent injunction restraining the defendants or anybody on their behalf from interfering in his peaceful possession and enjoyment over the suit schedule property.

4. On service of suit summons, the defendants appeared through their counsel and also they have filed written statement.

The sum and substance of the written statement filed by the defendants is as below:

The defendants in their written statement have totally denied the plaint averrments and contended that there is no any cause of action to file this suit.

It is their specific contention that defendants own property bearing janjer and property No.219, measuring East-west 17ft and North-South 44ft on the western side of the suit schedule property which originally belonged to the mother of defendant No.1. The defendant No.1 has succeeded the said property from his mother. The mother of defendant No.1 had built up a thatched shed in the vacant site about 35 years ago. After succeeding the said property by defendant No.1, the khatha was changed into the name of defendant No.2. Thereafter, defendant No.2 had applied for the Taluk Panchayath, for sanction of house and according the Taluk Panchayath has sanctioned a house to the defendant No.2 under Basava Vasathi scheme. The defendants tried to put up foundation in their property and also built up a wall upto 6 ft height on the foundation. The defendants have laid the foundation and have raised wall in their site and have obtained the license dated 17.10.2013 from Grama Panchayath. The plaintiff has not mentioned about the defendants vacant site situated on the western side of the suit schedule property in the plaint schedule. Therefore, the encroachment alleged by the plaintiff against the defendants on the western side of the plaintiff's property does not arise. Presently, the khatha of their above said property is continuing in the name of defendant No.2. The defendants at no point of time have interfered with the plaintiff's property in any manner. They have also not encroached any portion of the plaintiff's suit schedule property. It is also contended that

the plaintiff the boundaries mentioned in the suit described property and the extent are not correct. On all these grounds, they pray to dismiss the suit of the plaintiff.

5. On the basis of the rival pleadings between the parties, following issues are framed by my learned predecessor.

1. Whether the plaintiff proves that he is lawful possession and enjoyment of the suit schedule property as on the date of filing of the suit?
2. Whether the plaintiff proves that the alleged interference by the defendants?
3. Whether the plaintiff is entitled for the reliefs claimed ?
4. What order or decree?

6. To prove the case of the plaintiff, the plaintiff got examined himself as P.W.1 and he got produced 11 documents, marked as Ex.P.1 to P.11. Learned counsel for the defendants submitted there is no cross examination of Pw.1 and therefore cross of Pw.1 is taken as nil. The defendants have not led any evidence on their side. Hence defence evidence was taken as nil and the matter was posted for arguments.

7. Heard the plaintiff's side arguments and perused the materials on record.

8. My answers to the above issues are as follows :-

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

:- REASONS :-

9. **ISSUES No.1 to 3:-** All these issues are inter connected hence I have taken up for common discussion in order to avoid repetition of facts. I have already narrated the case of plaintiff and the defendant's claim.

10. Plaintiff in order to substantiate his case, got himself examined as Pw.1 and got marked Ex. P.1 to P.11. In his affidavit filed in lieu of his examination in chief has reiterated the plaint averments.

Ex. P.1 is the demand register extract of the year 2011-12 to 2012-13 in respect of suit described property. On careful perusal of Ex. P.1 it is found that the property and janjer number is shown as 218. However, there is no any description of the property and also the extent/ measurement in Ex. P.1. Further, at column No.4 meant to mention the name of the owner or person in possession name of one Kattemallaiah appears. Further, the boundaries to the said property is shown as “ ಪೂರ್ವಕ್ಕೆ ಮಾದಯ್ಯನವರ ಸ್ವತ್ತು, ಪಶ್ಚಿಮಕ್ಕೆ

ಮರಿಗಂಡಯ್ಯನ ಖಾಲಿ ನಿವೇಶನ, ದಕ್ಷಿಣಕ್ಕೆ ಮರಿಗಂಡಯ್ಯನ ಮನೆ, ಉತ್ತರಕ್ಕೆ ನಂಜುಂಡಯ್ಯನ ನಿವೇಶನ".

Ex. P.2 is the Assessment register extract of the year 1980-81 in respect of suit schedule property. Wherein the property and janjer number is shown as 218. Even in the Ex. P.2 there is no mentioning of extent or the measurement or even the description of the property. In column meant to mention the name of owner, one Kattemallaiah's name appears. Further, the boundaries are defined as “ ಪೂರ್ವಕ್ಕೆ ನಂಜಯ್ಯನವರ ಸ್ವತ್ತು, ಪಶ್ಚಿಮಕ್ಕೆ ಮರಿಗಂಡಯ್ಯನ ಖಾಲಿ ನಿವೇಶನ, ದಕ್ಷಿಣಕ್ಕೆ ಮರಿಗಂಡಯ್ಯನ ಮನೆ, ಉತ್ತರಕ್ಕೆ ನಂಜುಂಡಯ್ಯನ ನಿವೇಶನ”.

Ex. P.3 is the Assessment register extract of the year 2009-10 in respect of suit schedule property. At column meant to mention the description of the property it is shown as “ ನಾಡ ಹೆಂಚಿನ ಮನೆ ” and at column meant to mention the name of the owner the name of one Kattemallaiah is shown. In Ex. P.3 the boundaries to the said property is defined as “ ಪೂರ್ವಕ್ಕೆ ನಂಜಯ್ಯನವರ ಸ್ವತ್ತು, ಪಶ್ಚಿಮಕ್ಕೆ ಮರಿಗಂಡಯ್ಯನ ಖಾಲಿ ನಿವೇಶನ, ದಕ್ಷಿಣಕ್ಕೆ ಮರಿಗಂಡಯ್ಯನ ಮನೆ, ಉತ್ತರಕ್ಕೆ ನಂಜುಂಡಯ್ಯನ ನಿವೇಶನ”.

Ex. P.4 is the NCR issued by the Kowladande police station, dated 02.07.2013. Ex. P.5 to 7 are the tax paid receipts dated 21.05.2012, 06.11.2012 & 28.02.2008. It

shows the tax is paid in the name of Kattimallaiah in respect of the property bearing No.218. Ex. P.8 & 9 are the tax paid receipts dated 29.10.1992 & 01.04.1993 in respect of the property bearing NO.218. In Ex. P.8 & 9 it shown as ಮನೆ ಕಂದಾಯ and the tax paid is Rs.20/- and Rs.25/- respectively.

Ex. P.10 & 11 are the encumbrance certificates in respect of the suit schedule property. Wherein Ex.P.10 is for the period from 01.04.1930 to 31.03.1970 and Ex. P.11 is for the period from 01.04.2004 to 31.01.2018. But no transaction has been occurred in respect of the suit schedule property in aforesaid periods. Only in Ex.P.10 & 11 the extent of the property is mentioned as 80 X 55 ft. Further, it is also noted that in the Ex. P.10 the boundary of the property is shown as : “ ಪೂರ್ವಕ್ಕೆ ಮಾದಯ್ಯನವರ ಸ್ವತ್ತು, ಪಶ್ಚಿಮಕ್ಕೆ ಮರಿಗಂಡಯ್ಯನ ಖಾಲಿ ನಿವೇಶನ, ದಕ್ಷಿಣಕ್ಕೆ ಮರಿಗಂಡಯ್ಯನ ಮನೆ, ಉತ್ತರಕ್ಕೆ ನಂಜುಂಡಯ್ಯನ ನಿವೇಶನ”.

The defendants counsel had submitted that he has no any cross-examination of Pw.1. In view of the submission made by the defendants counsel the cross-examination of Pw.1 was taken as nil. Further, the defendants remained absent and did not led any evidence on their side. Therefore, the defence evidence also taken as nil and matter was heard on merits.

11. Admittedly this is a suit for bare injunction. Always the burden is on the plaintiff to prove that as on the date of the suit he was in lawful possession and enjoyment of the suit schedule property. The burden is casted upon the plaintiff and he shall not rely on the weakness of the defendants. Admittedly in the case on hand, the oral evidence of Pw.1 has remained unchallenged and unrebutted as the defendants counsel did not bother to cross-examine Pw.1 and elicit in support of their contention. Further, defendants have not led any evidence on their side. On careful perusal of the document relied by the plaintiff, it is important to state that as per the plaintiff's case the defendants are the western bajudars of suit schedule property and they are interfering in his peaceful possession and enjoyment over the suit schedule property wherein, the defendants are trying to digout in the vacant space of the plaintiff present on the western side of the suit schedule property and also tried to putup foundation. However, the defendants in their written statement have denied the said fact. No doubt, the contentions taken by the defendants in their written statement have remained mere self serving statement and there is no materisal on record to substantiate it. However, mere contention does not serve any purpose. The defendants have utterly failed to substantiate their contention raised in the written statement. But this itself does not entitle the plaintiff in getting a decree in his favour. It is always the burden of the plaintiff to prove his case on his own legs on by producing cogent evidence.

The plaintiff claims that he is the absolute owner and in possession of the suit described property. According to the plaintiff the property in plaint schedule is described as house and vacant site bearing property No.218 and Janjinder No.218, situated at Chunchanahalli village, Devanuru Grama Panchayath, Kavalande Hobli, Nanjangud Taluk, measuring East to West 80 ft, North-South 55 ft, and bounded on : East by : House of Nanjaiah, West by : Vacant site of defendants and one Marigandaiah, North by : Vacant site of Nanjaiah, South by : House belongs to Marigandaia. As narrated above in Ex. P.1 there is no any recitals with respect to the description of the property and also the extent. Furthermore, the boundaries in the plaint schedule property and also the boundaries mentioned in Ex. P.1 also does not tally because according to the plaint schedule to East of the suit schedule property lies house of Nanjaiah whereas in the Ex. P.1 to East is shown as Madaiah's property. Even the western boundary also does not match or tally. Because according to the schedule towards the western side of suit schedule property it is shown as vacant site of defendants and one Marigandaiah. But in Ex. P.1 towards western side shown as ಮರಿಗಂಡಯ್ಯನ ಖಾಲಿ ನಿವೇಶನ. The main dispute averred in plaint is that the defendants have encroached his vacant site at western side of the suit schedule property. That is according to the plaintiff the defendants are the western bajudars but Ex. P.1 says that towards the western side there lies the vacant site of

Marigandaih. Further, even the northern side boundary also does not tally because as per plaint schedule to North lies vacant site of Nanjaiah but in Ex. P.1 towards Northern side it shown as "Nanjundaiah's vacant site". The Ex. P.1 being the document of the suit year does not clearly describe the nature or the description of the property and also the extent. In Ex. P.3, that is the assessment register extract of year 2009-10 in respect of the suit schedule property, the nature of property is described as " ನಾಡ ಹೆಂಚಿನ ಮನೆ". It is pertinent to observe that there is no any mentioning of any vacant site to be prevailing in the said property. Even in Ex. P.3, there is no mentioning of the extent or the measurement of the said property or even the description. Except for Ex. P.10 & 11 no other documents clearly describes the nature or description of the property and also the measurement of extent. Further, the boundaries described in the plaint schedule also do not tally with the boundaries mentioned in the document relied by the plaintiff. Plaintiff has also not produced any building plan, license to ascertain the existence of house and vacant site in suit schedule described property. In a suit for injunction boundaries are of utmost concern to grab the circumstance of lawful possession of party over the property. But in case on hand, even the boundaries mentioned in suit schedule does not tally with documents relied by plaintiff. When such is the case, there is no sufficient material placed on record and produced by the plaintiff to gathered that plaintiff is in lawful possession of suit schedule property as

on date of suit. The materials relied by the plaintiff are insufficient to conclude that the plaintiff is in lawful possession and enjoyment of the suit described schedule property as on date of suit. Hence, with above discussion and observation is concluded that plaintiff has failed to prove his lawful possession over suit schedule property as on date of suit. Once, the possession of plaintiff is not established then the question of alleged interference and granting of relief of permanent injunction does not arise at all. Hence, the **Issues No.1 to 3 are answered in the Negative.**

12. **ISSUE No.4:-** In view of the above findings given on Issues No.1 to 3, this Court proceeds to pass the following:

-: **ORDER** :-

The suit of the plaintiff is hereby dismissed with cost.

Draw decree accordingly.

(Dictated to the Stenographer directly on the computer, typed by her, corrected and then pronounced by me in the Open Court on this 02nd of March, 2022).

[Vinutha.D.S]

II Addl., Civil Judge & JMFC
Nanjangud

-: **ANNEXURES** :-

1. No. of witnesses examined for plaintiff:-
P.W.1 : Mahadevaiah
2. No. of witnesses examined for defendant:- NIL

3. List of documents marked for plaintiff :-

Ex.P.1 : Demand register extract in respect of suit
schedule property

Ex.P.2 & 3 : Assessment register extract in respect of
suit schedule property

Ex. P.4 : NCR issued by Kavalande police station

Ex. P.5 to 9 : Tax paid receipt

Ex. P.10 & 11 : Encumbrance certificates

4. List of documents marked for defendant :- NIL

[Vinutha.D.S]

II Addl., Civil Judge & JMFC
Nanjangud