

C.R.P.67 TITLE SHEET FOR JUDGEMENTS IN SUITS
Form No.9 (civil),
Title sheet for
Judgements in suits,
(R.P.91)

**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC, AT
NANJANGUD**

PRESENT : SMT.SHARMILA .S. B.Com.,LL.B.,
Prl. Civil Judge & JMFC,
Nanjangud

Dated this the 2nd day of August 2017

O.S.NO.629/2014

- Plaintiff/s :
1. Kempamma, w/o late Basavegowda
Aged about 60 years,
 2. B.Ravikumara, s/o late Basavegowda
Aged about 32 years,

Both are R/at Tagadru village, Biligere
Hobli, Nanjangud Taluk.

(By Sri.P.Mahesh, Advocate)

-Vs-

- Defendants:
1. The Tahasildar, Taluk Office, Nanjangud
 2. The Deputy Commissioner,
Deputy Commissioner Office, Mysore
 3. T.R.Puttaswamaiah, s/o T.H.Rangaswamy,
Aged about 50 years,
 4. Doddamasanamma, D/o late Moogegowda,
Aged about 65 years,
Defendants No.4 & 5 are R/at Tagaduru
Village, Biligere Hobli, Nanjangud Taluk.

**(D1, 2 and 4 placed Exparte, D3 By
Sri. M.Srikanta, Advocate)**

Date of institution of suit	-	13.11.2014
Nature of suit	-	Declaration & Mandatory Injunction
Date of commencement of Recording of evidence	-	11.01.2017
Date of pronouncement of Judgment	-	02.08.2017
Total duration	-	years Months Days 02 08 20

Sd/-
(SHARMILA .S.)
Prl. Civil Judge & JMFC
Nanjangud

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J U D G M E N T

This is the suit filed by the plaintiffs against the defendants seeking the relief of declaration declaring that they are the absolute owners of the suit schedule property bearing Sy.No.339/3 (339/3a) measuring 10 guntas on the eastern side at Tagaduru village, Biligere Hobli, Nanjangud Taluk on the basis of the registered sale deed dated 20/10/1979 and consequential relief of direction to the 1st defendant to enter the name of plaintiffs on all the revenue records in respect of the suit schedule property.

2. The brief facts of the plaintiff's case is as follows:

According to the plaintiffs one Basavegowda s/o Moogegowda is the husband of the 1st plaintiff and father of the 2nd plaintiff. The above said Basavegowda during his life time had purchased the lands in Sy.No.339/3 (339/a)

measuring 10 guntas and in Sy.No.340/6 (340/6B) measuring 10 guntas from K.T.Nagappa through a registered sale deed dated 20/10/1979. According to the plaintiff as on the date of purchase the suit property, the husband of the 1st plaintiff Basavegowda is in lawful possession and enjoyment of the suit schedule property as an absolute owner till his death. The said Basavegowda died on 8/9/2001 and after his death the plaintiffs being the legal heirs as continued in possession and enjoyment of the suit schedule property. Except the plaintiffs nobody has got any manner of right, title and possession of the suit schedule property.

3. Further the plaintiffs contend that the said Basavegowda and plaintiffs are being illiterate, innocents and having no worldly knowledge and could not be able to get change the khatha in their favour with respect to the suit schedule property. When such being the case the plaintiff came to know about the alleged entry of one person by name T.R.Puttaswamaiah in respect of the suit schedule property. Except the plaintiff the said t.R.Puttaswmaiah or anybody have no manner of right, title and possession over the suit schedule property. Mere change of katha in favour of defendant with respect to suit schedule properties never creates any right to them nor takes away the right of the plaintiffs. Till today the plaintiffs are in physical possession and enjoyment over the suit schedule property.

4. The plaintiffs further contends that after noticing the said illegal entry, the plaintiff rightly filed necessary application before the 1st defendant for change of Katha of the suit property in their favour. But the 1st defendant instead of

complying the lawful demand of the plaintiff issued an endorsement to approach the civil court for redressal. Hence, the plaintiff filed this suit for the relief of declaration and mandatory injunction. Among other grounds, the plaintiff prays to decree the suit.

5. After service of court summons and notice to the defendants, the defendants No.1, 2 and 4 have not appeared before the court and hence, they have placed exparte. The 3rd defendant appeared through his counsel and filed his written statement by denying the entire averments of the plaint and also contends that the father of the 3rd defendant had purchased he property bearing Sy.No.339/3B measuring 28 guntas and 340/6B measuring 16 guntas, situated at Tagadur village, Biligere Hobli, Nanjangud Taluk from one Kuntegowda on dated 26/4/1958 through a registered sale deed. Till his death, the father of the 3rd defendant was in peaceful possession and enjoyment of the said properties. After his death, the defendant No.3 is in possession and enjoyment of the said properties. They have surveyed the properties and fixed the Haddubast Stone. According to this defendant the 4th defendant is in possession of the western side of the property of the 3rd defendant. The said property was divided in to nine phode and the 4th defendant was in possession of 8th phode and on the western side of the 3rd defendants property ie., in Sy.No.339/3A the 4th defendant was in possession. In the Form No.5 & 6 the father of the 3rd defendant's name has been surfaced from the past 1967-68. After his death, the 3rd defendant is in possession of the above said property. Hence, the said deed executed in favour of the plaintiffs is not correct according to this defendant.

Among other grounds, the 3rd defendant prays to dismiss the suit of the plaintiff.

6. On the materials available on record, I have framed the following issues:

1. **Whether plaintiffs prove that they are the absolute owners of the suit schedule properties?**
2. **Whether plaintiffs are entitled for mandatory injunction?**
3. **Whether the 3rd defendant proves that the sale deed in favour of the plaintiff is not correct as contended in his written statement?**
4. **Whether plaintiffs are entitled for the relief sought?**
5. **What Order or decree?**

7. To substantiate this point, the 1st plaintiff himself examined as PW1 and got marked Ex.P1 to 36 documents and closed his side. The 3rd defendant's counsel filed memo stating that he has no objection to decree the suit for Sy.No.339/3(339/3A) measuring 10 guntas instead of Sy.No.339/3B.

8. Heard arguments on both sides.

9. My findings on the above points for consideration are as under:

- | | |
|------------|---|
| Point No.1 | : In the Affirmative |
| Point No.2 | : In the Partly Affirmative |
| Point No.3 | : In the Negative |
| Point No.4 | : In the Partly Affirmative |
| Point No.5 | : As per my final orders
for the following |

REASONS

10. **Point No.1 to 4:**

Since these issues are interrelated and interlinked with each other, I had taken up these issues together for discussion in order to avoid repetition.

With respect to these issues are concerned the defendant No.3 has admitted that he has no objection to decree the suit in favour of the plaintiff with respect to the suit schedule property. Other defendants have not come forwarded to contest the case of the plaintiff. To substantiate their contention, the 1st plaintiff himself appeared before the court and filed his affidavit in lieu of her chief examination and reiterated the plaint averments. In support of her case, the plaintiff has also produced the death certificate of her husband, Sale deeds, RTCs, Mutation, Sketch, Akarbandh, Endorsement issued by the Tahasildar, legal notices, encumbrance certificate.

11. On perusal of both oral and documentary evidence, it is pertinent to note that the one Basavegowda has purchased the suit schedule property through a registered sale deed with respect to the suit schedule property and on the basis of the same, the said Basavegowda was in possession and enjoyment of the suit schedule property. After his demise, the plaintiffs are in possession and enjoyment of the suit schedule property. Moreover, the defendant No.3 has admitted the case of the plaintiffs. The other defendants have not appeared before the court to

contest the case of the plaintiff. Hence, the oral as well as documentary evidence are unchallenged. From these observations, I am of the opinion that the plaintiffs are partly entitled for the relief as sought in the plaint.

12. At this stage it is relevant to refer a decision reported in **2013(3) KCCR 2539 between Sri.H.Channahanumaiah Vs The State of Karnataka and others** wherein our Hon'ble High Court of Karnataka held that:

"Karnataka Land Revenue Act 1964-Section 128(3)-Mutation-Mutation entry sought in 2008 based on sale deed of 1958-Whether it can be done-Limitation.

Held, the failure on the part of the registering authority to send the report or of the revenue officers to act thereupon cannot put the interests of the respondent No.5 in jeopardy. It is incumbent upon the revenue authorities to enter the name of the respondent No.5 in the owner's column in the record of rights. As held in Gollappa's case neither Section 128 nor Section 129 of the Act prescribes any period for filing an application seeking the mutation in case of acquisition of a right. Ex facie, a registered document confers a good title on a person. The application for the change in the revenue entries cannot be rejected on the ground of delay if the claim for such a change is based on the registered document.

13. On perusal of both oral and documentary evidence, in the instant case also the plaintiffs are claiming ownership on the basis of the registered sale deed and it is clear that the plaintiffs are the absolute owner of the suit schedule property. And the documents clearly reveal that how the husband of the 1st plaintiff got the suit property.

Moreover, there is no objection by the defendant No.3 to decree the suit in favour of the plaintiff and the oral as well as documentary evidence are remained unchallenged.

14. The only contention of the plaintiff are that they have made a requisition before the 1st defendant to change the khatha in their favour on the basis of the sale deed. But the Tahasildar had given an endorsement to approach the civil court and to file a suit for declaration and if the plaintiffs get an order of declaration with respect to the suit property, then he will change the khatha of the suit property in to his name. On perusal of the documents, it reveals that following the toe line of the registration, the RTC has been brought forwarded by the registry authority in the name of the 3rd defendant. But as per Sec.128 of Karnataka Land Revenue Act mode of acquisition of land should be reported in favour of the plaintiffs in terms of the execution of sale deed. But they did not do so. If the revenue authorities failed to do so, the option is left open to the plaintiffs for their redressal to change the khatha in their name, they have to approach the Asst. Commissioner of their jurisdiction U/s 136 of the Karnataka Land Revenue Act. But on perusal of the Sale deed and other documents produced by the plaintiffs, it is clear and sacrosanct to prove that the husband of the plaintiff No.1 was absolute owner of the suit schedule property and after his death, the plaintiffs being the legal heir, has become the absolute owners. But, the plaintiffs did not hire up the matter before the higher revenue authority regarding the mutation entries in their favour. So that, the remedies is else where to approach the revenue court to mutate their names in the RTCs. So, this court has no authority to issue any

direction to mutate their names in the revenue record. But this court has jurisdiction to declare their right as owners of the suit schedule property. In other words, the plaintiffs are the absolute owners of the suit schedule property. To deny these facts, the defendants have not come forward to contest the case. Therefore, I answer issue No.1 in the Affirmative, Issue No.2 & 4 in the Partly Affirmative, Issue No.3 in the Negative.

15. **Point No.5:** In view of my above assigned reasons to the Issue No.1 to 4, this Court proceeds to pass the following:

ORDER

The suit of the plaintiffs is partly decreed.

Consequently, the plaintiffs are hereby declared as the absolute owners of the suit schedule property.

Draw decree accordingly.

(Dictated to the stenographer directly on the computer, typed by her and after correction, pronounced by me in the open court on this the 2nd day of August 2017)

Sd/-
(SHARMILA .S.)
Prl. Civil Judge & JMFC
Nanjangud

ANNEXURE

List of witnesses examined for plaintiff/s

P.W.1 : Kempamma

List of documents exhibited for plaintiff/s

Ex.P1 : Death Certificate
Ex.P2 & 3 : Sale deed dated 20/10/1979
Ex.P4 : Sale deed dated 13/4/1978
Ex.P5 : Sale deed dated 15/5/1978

Ex.P6 to 19	:	RTCs
Ex.P20 & 21	:	Mutations
Ex.P22 & 23	:	Sketch
Ex.P24 & 25	:	Akarband
Ex.P26 to 29	:	RTCs
Ex.P30	:	Endorsement by the Tahsildar
Ex.P31 to 33	:	Postal acknowledgements
Ex.P34	:	Office copy of the Legal notice
Ex.P35	:	RTC
Ex.P36	:	Encumbrance certificate

List of witnesses examined/documents exhibited for defendant/s

-NIL-

Sd/-
(SHARMILA.S)
Prl. Civil Judge & JMFC
Nanjangud

JUDGEMENT PRONOUNCED IN THE OPEN
COURT (VIDE SEPARATE)

O R D E R

**The suit of the plaintiffs is partly
decreed.**

**Consequently, the plaintiffs are
hereby declared as the absolute owners
of the suit schedule property.**

Draw decree accordingly.

PCJ & JMFC, Nanjangud.