

KAMS710008692016



IN THE COURT OF
CIVIL JUDGE AND JMFC AT T.N.PURA,MYSORE

PRESENT : SRI. PRASHANTHA G.C.,BAL., LLM.,
Civil Judge and JMFC.,
T.Narasipura.

DATED THIS THE 26th DAY OF OCTOBER 2021

O.S./149/2016

Plaintiff : Smt.H.M.Nagamma,
W/o S.Ningaiah,
aged about 45 years,
R/at Kethupura Village,
Sosale Hobli,
T.Narasipura Taluk.

By **Sri.K.S.Shambhulingaswamy**
Advocate

V/s

Defendants : 1. Sri. M.Mahadevappa,
aged about 60 years,
S/o Late Mallanna,

2. Sri. Nagesha,
S/o M.Mahadevappa,
aged about 38 years.

3. Sri.Nagendra,
S/o M. Mahadevappa,

aged about 36 years,

4. Sri.Kumara,
S/o M.Mahadevappa,
aged about 34 years,

All are residing at Ukkalagere
Village, Sosale Hobli,
T.Narasipura Taluk.

Defendants No.1 to 4 by
Sri.N.L.Linganna advocate.

Date of institution of the suit	:	19.07.2016		
Nature of the suit (Suit on Pronote, Suit for declaration & possession Suit for injunction, etc.)	:	DECLARATION AND PERMANENT INJUNCTION		
Date of commencement of recording of the evidence	:	18.01.2017		
Date of which the Judgment was Pronounced	:	26.10.2021		
Total Duration	:	<u>Years</u>	<u>Months</u>	<u>Days</u>
		05	03	07

(PRASHANTHA G.C.)
Civil Judge and JMFC.,
T.Narasipura.

JUDGMENT

The plaintiff has filed this suit for the relief of declaration to declare that she is the absolute owner of the suit schedule property, to direct the defendants to deliver pump set house situated at western direction and consequential relief of permanent injunction.

2. Brief facts of the plaintiff's case are:

That the plaintiff has pleaded that she is the absolute owner of the suit property. The suit A property is purchased by her under the registered Sale Deed dated 22.03.2001 from her vendor. The vendor of the plaintiff and the 1st defendant partitioned their ancestral property equally. The original Sale Deed of the plaintiff is pledged in the Bank to avail agricultural loan. Subsequent to purchase of suit property, the plaintiff dug a bore well towards western side during 2007 and water got dried up in the Borewell during 2011. The plaintiff constructed a pump set house towards western side of the property. Therefore, the plaintiff dug another bore well on 11.02.2013.

3. It is further pleaded in the plaint that the plaintiff has delivered the possession of the landed property and

adjacent karab lands towards south western side direction of the suit schedule property, as the vendor of her also cultivated the same, prior to execution of the Sale Deed dated 22.03.2001. But, the RTC extract shows the measurement of the plaintiff and the defendant land to the extent of 0.39 guntas each. The defendants land is situated towards eastern side of the suit schedule property and the boundary given in the Sale Deed dated 22.03.2001 discloses the same. The katha of the suit property also changed the name of the plaintiff and she is paying tax time to time.

4. The plaintiff further pleaded in the plaint that defendant No.1 by misleading this Court and on misrepresentation of facts, filed a suit in OS No.191/2013 by taking false contention that he got installed the bore well in Sy.No.394 during March 2013. The 1st defendant has not produced iota of documents at the time of presentation of plaint. But later the defendants have created a false document and the borewell agency referred in the certificate and receipt in the earlier suit is not at all in existence. It is further stated in the plaint that the plaintiff is in possession and enjoyment from the date of purchase of the suit. Sy.No.394 is not yet sub divided, share of the plaintiff and defendant No.1 not yet de-marked by the survey department. The Haddubastu is also not made to separate the land of the

plaintiff and the defendants. The Court without considering all the illegal activities granted TI of the 1st defendant and rejected the application filed by the plaintiff in OS No.191/2013. Against the TI order the plaintiff preferred MA No.4/2013 and the same also dismissed on 07.04.2016. The defendants have destroyed the pipe line installed in the plaintiff land in Sy.No.394 on 29.02.2016 and denied the right and title of the plaintiff over the suit property. Therefore, the plaintiff lodged a complaint before the Bannuru Police Station on 29.02.2016. The defendants taking the advantage of the order passed in MA, illegally broke open the lock of the pump set house of the plaintiff on 10.04.2016 and dispossessed the plaintiff.

5. It is further pleaded that Taluk Surveyor conducted the survey on 06.07.2013 and fixed the Haddu bastu boundary to the extent of 1 acre 38 guntas in Sy.No.394. But the surveyor did not bifurcate and fix the Haddu bastu of the suit schedule property belong the plaintiff towards the western side and the defendants land towards the eastern side. The defendants have no right over the suit property have not heeded to the advise of the villagers also. The defendants are strong and influential persons are not allowing the plaintiff to cultivate her land and continued their interference with the peaceful possession and enjoyment of

the suit schedule property. Hence, the plaintiff has filed this suit.

6. In pursuance to the suit summons the defendants appeared through their Counsel. But, they have not filed written statement.

7. The plaintiff in order to prove her case she her self examined as PW1 and produced Ex.P1 to P28.

8. Heard the Counsel for the plaintiff and perused the materials available on record.

9. The points arisen for consideration of this Court are as follows :

1. Whether the plaintiff proves she is the absolute owner of the suit schedule property ?
2. Whether the plaintiff proves that the defendants have illegally taken the possession of the pump set house situated towards the Western direction of the suit property ?
3. Whether the plaintiff proves alleged interference by the defendants ?
4. Whether the plaintiff is entitled for the relief of declaration, possession, and permanent injunction ?

5. What order or decree?

10. This Court answers the above points in the following:

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

11. **Point No.1 to 3:** The plaintiff has pleaded that she is the absolute owner of the suit property. The defendants have illegally taken the possession of Pump House built on the western side of the suit property and the defendants are causing interference over the suit schedule property. Hence these points are inter-related in order to avoid repetition of the facts and reasons, these points are taken together for common discussion.

12. It is the specific case of the plaintiff that she has purchased 0.39 guntas in Sy.No.394 under registered Sale Deed dated 22.03.2001. Subsequent to purchase, the plaintiff dug a bore well towards western side during 2009. The water from the bore well dried up during 2011. The plaintiff has

also constructed a pump set house towards the western side of her property. The plaintiff again dug a bore well on 11.02.2013. The vendor of the plaintiff delivered a possession towards south western direction of the suit property. The defendants land is situated towards the eastern side of the suit property.

13. In order to prove the case of the plaintiff the plaintiff got examined as PW1. She has reiterated the plaint averments in her chief examination by way of an affidavit.

14. Ex.P1 is the registered Sale Deed dated 22.03.2021. It reveals that the plaintiff has purchased 0.39 guntas from her vendor. The suit property is bounded on east by land of Mahadevappa, west by road, south by Kere Angala, North by land of Mallikarjunaswamy. The plaintiff has shown very same boundaries in the plaint. Ex.P3 and Ex.P4 are the RTC for the period of 2012-13 and 2015-16 shows that 0.39 guntas in the name of the plaintiff and 0.39 gunats in the name of the 1st defendant. Ex.P5 is the Akarbandh shows 1 acre 38 guntas in the suit survey number.

15. The Counsel for the plaintiff argued that the 1st defendant has filed OS No.191/2013 before this Court for the

relief of permanent injunction. Ex.P16 is the certified copy of the plaint shows that the 1st defendant in this case has filed said suit against the present plaintiff for the relief of permanent injunction.

16. Ex.P17 is the written statement filed by the present plaintiff in OS No.191/2013. On perusal of Ex.P17 it is pleaded that though the plaintiff purchased 0.39 guntas, but the plaintiff is in possession to the extent of 0.49 guntas. It is also pleaded that the present plaintiff dug a bore on 28.05.2003 towards the eastern side and also constructed pump house therein. The water in the said bore well dried up during 2011. Therefore, again on 11.02.2013 towards eastern side of the suit property bore well was dug.

17. It appears from Ex.P19 the 1st defendant in this case has filed IA No.1 under Order 39 Rule 1 and 2 in OS No.191/2013 and the same came to be allowed. Thereafter, the present plaintiff aggrieved by the order passed on IA No.1 preferred an appeal before Hon'ble Sr. Civil Judge and JMFC., T.Narasipura in MA No.4/2013. Said MA also came to be dismissed.

18. The plaintiff has produced Ex.P8, Ex.P9, Ex.P23 to Ex.P27 photos to show that the plaintiff is cultivating and

borewell is situated. It also appears that the plaintiff has given a legal notice to the CESCO, Tahasildar, and Surveyor as per Ex.P21 and Ex.P22.

19. There is no doubt that the plaintiff has purchased suit schedule property to the extent of 0.39 guntas under Ex.P1. The boundaries shown in the Ex.P1 and the plaint are similar. Therefore, the plaintiff is the absolute owner of the suit schedule property. The point to be appreciated is whether the plaintiff has built pump set house in his property or in the property of the defendants. Admittedly, the plaintiff pleaded that towards the eastern side of the suit property the land of the 1st defendant is situated. The plaintiff in Ex.P17 written statement filed by her in OS No.191/2013 has stated that the plaintiff has dug a borewell and built a pump house towards the eastern side of the suit property. The plaintiff has also pleaded in the said written statement that she is in possession to the extent of 0.49 guntas though she purchased 0.39 guntas from her vendor.

20. The plaintiff has pleaded in the present plaint that she has dug a bore well and built a pump set house towards western side. The pleadings of the plaintiff in this case is contrary to the pleadings of the plaintiff in Ex.P17. The plaintiff herself is not confident that in which part of her

property she has dug a bore well and built a pump house. In this back ground the plaintiff filed an application to appoint a Commissioner to throw the light. On the basis of said application Taluk Surveyor is appointed as a Court Commissioner. He submitted a report. On perusal of sketch, it shown that that the plaintiff has dug borewell and constructed a Pump House on western side of the suit property. The report is not disputed by the defendants.

21. The plaintiff has alleged that the defendants have taken the possession of Pump House illegally. The defendants have not appeared in this case. Hence adverse inference has to be drawn that they have taken the possession of the Pump House illegally and the defendants are illegally interfering with the possession of the suit schedule property. The defendants have not challenged the oral and documentary evidences produced by the plaintiff. Hence this Court left with no option except to believe the evidences produced the plaintiff. Accordingly this Court answers Point No.1 to 3 in the **Affirmative**.

22. **Point No.4:** The plaintiff has proved that she is the absolute owner of the suit schedule property. The defendants have illegally taken the possession of the suit Pump House and the defendants are causing interference over the suit

schedule property. Accordingly this Court answers Point No.4 in the **Affirmative**.

23. **Point No.5:** For the reasons stated in Point No.1 to 4, the suit is liable to be decreed. In the result this Court proceeds to pass the following:

ORDERS

*The suit of the plaintiff is hereby **decreed**.*

The defendants are hereby directed to hand over the possession of the Pump House situated towards the western side of the suit schedule property within 60 days from the date of this order.

The defendants, their agents, successors or anybody acting on behalf of them are hereby restrained from interfering with the peaceful possession and enjoyment of the plaintiff in respect of the suit schedule property.

Draw decree accordingly.

(Dictated to the Stenographer directly on computer, typed by her, corrected and then pronounced by me in the open court on 26.10.2021)

(PRASHANTHA G.C.)
Civil Judge and JMFC.,
T.Narasipura.

ANNEXURE

Witnesses examined on behalf of plaintiff:

PW 1 : Smt. H.M.Nagamma

Documents exhibited by the plaintiff:

Ex.P1 : C/c of Sale Deed,
Ex.P2 : C/c M.R. extract
Ex.P3 & 4 : RTCs
Ex.P5 : Akarabandh
Ex.P6 : C/c of Charge sheet copy.
Ex.P7 : Police Acknowledgement
Ex.P8 to 12 : Photos
Ex.P13 : CD
Ex.P14 : C/c of Deposition of 1st defendant in OS
No.191/2013
Ex.P15 : C/c of Ex.P1 to 15 in OS NO.191/2013
Ex.P16 : C/c of Plaint in OS No.191/2013
Ex.P17 : C/c of written statement in OS
No.191/2013
Ex.P18 : C/c of Memorandum of appeal in MA
No.4/2013
Ex.P19 : C/c of Judgment in MA No. 4/2013
Ex.P20 : Memo in MA No.4/2013

Ex.P21 : Legal notice ,
Ex.P22 : Legal notice to Tahasildar and Survey
Department.
Ex.P23 to 27 : Photos
Ex.P28 : CD

**Witnesses examined and Documents exhibited on behalf
of defendants:**

.....NIL.....

**Civil Judge and JMFC
T.Narasipura.**

