

TITLE SHEET FOR JUDGMENT IN SUITS
IN THE COURT OF SENIOR CIVIL JUDGE AND
J.M.F.C. DEVADURGA.
AT: DEVADURGA.

Dated: On this the 1st Day of April 2021.

Present Before SMT. Y.L.LADKHAN
B.A.LL.B (Spl.)

SENIOR CIVIL JUDGE AND J.M.F.C. DEVADURGA.

Original Suit No.88/2019

Plaintiff: Sabanna S/o Late Bheemanna,
Age: 30 years, Occ: Agriculture,
R/o Chikkahonnakuni village,
Tq: Devadurga, Dist: Raichur.
(By Sri. B.S. Advocate)

-Versus-

Defendants: 1) Mallamma W/o Late Hanumantha,
Age: 40 years, Occ: Agriculture,
2) Basavaraj S/o Late Hanumantha,
Age: 15 years.
3) Anil Kumar S/o Late. Hanumantha,
Age: 12 years.
4) Bassamma W/o Late. Hanumantha,
Age: 45 years, Occ: Agriculture.
5) Malappa S/o Late. Hanumantha,
Age: 19 years, Occ: Agriculture.

All R/o Chikkahonnakuni village,
Tq: Devadurga, Dist. Raichur.

- 6) Shivalingamma W/o Basavaraj,
Age: 25 years, Occ: Agriculture.
R/o Jagatagal village,
Tq: Devadurga, District: Raichur.

(By Sri. M.D.Patil. Advocate)

Date of institution of the suit	:	16-09-2019
Nature of the suit	:	Declaration and Permanent Injunction.
Date of the commencement of evidence	:	08-02-2021
Date of closure of evidence	:	24-02-2021
Date of judgment	:	01-04-2021
Total duration	:	Year/s month/s day/s 01 06 16

(Smt. Y.L.Ladkhan)
B.A. LL.B (Spl)
Senior Civil Judge and JMFC,
Devadurga.

JUDGMENT

The plaintiff has filed this suit for the relief of declaration to declare him as an absolute owner and possessor of suit land and also consequential relief of

permanent injunction against the defendants and also for rectification of revenue records of the suit schedule property.

II) The plaint averments is as under:

The suit schedule property is an agricultural land bearing Sy.No.24/* /1 measuring 02 acre 00 guntas assessed at Rs.05.24 paisa situated at Chikkahonnakuni village of Devadurga bounded on East: Land of Sabanna, on West: Land of Mallikarjun Gouda Masarkal, on North: Land of Siddayyaswami and on South: Land of Shivarajappa Gouda Chikkahonnakuni. One Hanumantha was the original owner and pattedar of the land bearing Sy.No.24/☺ measuring 05 acres 23 guntas land situated at Chikkahonnakuni village of Devadurga Taluka who died leaving behind him 2 sons by name 1) Lingappa and 2) Bhimanna as his legal heirs. After his death, his both sons have orally partitioned the suit schedule property and the suit land and other lands were

fallen to the share of Bhimanna. After death of the elder son of prepositor by name Lingappa, who died leaving behind his wife Lachamma and a son by name Mallappa and 5 daughters by name 1) Shivanamma 2) Hanumantemma 3) Ayyamma 4) Nagamma 5) Mallamma as his legal heirs and successors. The 2nd son of the prepositor by name Bhimanna also died leaving behind his wife Shanthamma and a daughter by name Shivanamma and 2 sons by name Mallappa and Sabanna i.e. is the plaintiff of the suit. After death of Bhimanna the both the sons have orally partitioned in the year 1997 over the family properties and in the said partition the suit land and the other land was allotted to the share of plaintiff as joint application was submitted by the mother of the plaintiff and his brother to the revenue authorities as such mutation is effected to the above land and name of plaintiff is entered to M.E.No.5/1996-97 on 26-04-1997. When the said partition was effected at that time the plaintiff was minor and the mother of the plaintiff by name

Shanthamma W/o Bheemanna was the natural guardian and under her guardianship the partition was effected and plaintiff was allotted the suit schedule property. Since the said date of oral partition the plaintiff became the absolute owner and possessor of the suit land and he is cultivating the suit schedule land from then till today. The husband of defendant No.1 is nowhere concerned to the plaintiff and also to his family. The husband of defendant No.1 was aware of rights and interest of the plaintiff over the suit land and with the mala-fide intention of cheating and duping the plaintiff had filed application for mutation of his name to the extent of 02 acres out of 05 acres 23 guntas in the suit land i.e. Sy.No.24/೨ situated at Chikkahonnakuni before the Revenue Inspector of Chikkahonnakuni. The Revenue Authorities without enquiring into the matter and without giving any notice to the plaintiff and without calling for the objections and by colluding with the husband of the defendant No.1 have passed the mutation order No.8/2006-07 dated:25-11-2006 of the suit land in

favour of the husband of defendant No.1. After death of Hanumantha S/o Lingappa defendant No.1 Mallamma illegally got entered her name to the suit property by falsely submitting the application through mutation order No.H14/2018-19 dated:18-02-2019 on the basis of succession and survey number of the suit land is rectified as Sy.No.24/* /1 without the knowledge and consent of the plaintiff. Hence the said mutation order is illegal, null and void and not binding on the plaintiff as he was not party to said proceedings. The plaintiff has sold 02 acres of land in the middle portion of Sy.No.24/☺ out of 05 acres 23 guntas and the remaining land of 01 acre 23 guntas is situated towards the Eastern side which belongs to the plaintiff and remaining 02 acres of land is situated on the Western side which is sold by him also belonged to him. The husband of defendant No.1 and the legal heirs of Hanumantha S/o Lingappa are nowhere concerned to the suit land and to the plaintiff and they have got no rights, title, interest or possession over the suit land and they are totally

strangers, without having any rights, the husband of defendant No.1 and defendant No.1 have illegally got mutated the suit land. When the plaintiff came to know about the illegal mutation order No.8/2006-07, the plaintiff preferred R.R.T. Appeal No.166/2014-15 before Assistant Commissioner, Raichur and the same is pending for enquiry. The cause action for the suit arose on 07-07-2019 when plaintiff was engaged in the agricultural work over the suit land and at that time defendants illegally interfered in the suit land and denied the title of the plaintiff over the suit land and also threatened that they will dispossess him but with intervention of the elders of the village who advice the both the parties to settle the matter before competent court of law. The defendants gave a threat to the plaintiff stating that they will come with more force and they dispossess him from the suit land. Hence the plaintiff is constrained to file the suit. The defendants are highly politically influenced persons and having muscle power and they will not hesitate to do any illegal acts. Hence the

plaintiff has filed the suit seeking the relief of declaration that he be declared as absolute owner and possessor of the suit land and defendants be restrained by an order of permanent injunction from causing any interference to the peaceful possession and enjoyment over the suit schedule property. The suit schedule properties is situated and parties to the suit are residing within the territorial jurisdiction of this court, hence this court has got jurisdiction to try and entertain the suit. The plaintiff has valued the suit for the purpose of pecuniary jurisdiction for Rs.6 lakhs and has paid court fees Under Sections 24(b) and Section 43 of Karnataka Court Fee and Suit Valuation Act. The plaintiff has also contended that the suit filed by him is well within the period of limitation, hence has prayed to decree the suit with cost and plaintiff be declared as absolute owner and possessor of suit schedule land bearing Sy.No.24/* /1 measuring 02 acres 00 guntas at Rs.05.84 paisa situated at Chikkahonnakuni village of Devadurga and mutation order No.8/2006-07 dated:

25-11-2006 and mutation order No.H14/2018-19 dated:18-02-2019 be declared as illegal, null and void and not binding on him. The defendant No.1 to 6 and their agents, servants or assignees or any other persons claiming on behalf of the defendants be restrained permanently from causing interfering in the peaceful possession and enjoyment of plaintiff over the suit land and directions also be issued o the revenue department for mutation of the suit land in the name of the plaintiff and any other reliefs that deem fit also be granted.

III) After due service of suit summons defendant No.1 to 6 have appeared through Sri. M.D.P. Advocate, but inspite of affording sufficient opportunities defendants have not filed any written statement, hence on 15-12-2020 written statement of defendant No.1 to 6 is taken as not filed.

IV) On 08-02-2021 plaintiff has examined himself as P.W-1 by filing affidavit evidence through V.C. and got

marked Ex.P-1 to Ex.P-10. The counsel for the defendant remained absent hence cross of P.W-1 is taken as nil.

The counsel for the plaintiff submitted he has no evidence to lead hence evidence of plaintiff is taken as nil.

V) I have heard the arguments of the counsel for the plaintiff and inspite of affording sufficient opportunities the counsel for the defendants has not addressed any arguments.

VI) I have perused the materials placed before the court.

VII) The following points have arisen for my consideration.

1. Whether plaintiff proves his title/ownership over the suit schedule property ?
2. Whether plaintiff proves his lawful possession and enjoyment over the suit schedule property as on the date of filing the suit ?
3. Whether the plaintiff proves the alleged interference of defendants over the suit schedule property ?

4. Whether the plaintiff entitle for the relief of declaration as sought for in the plaint ?
5. Whether the plaintiff entitle for the relief of permanent injunction as sought for in the plaint ?
6. Whether the plaintiff entitle for the relief of rectification of revenue records of the suit schedule property as sought for in the plaint ?
7. What order or decree ?

VIII) My answer 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	:	In the Affirmative.
Point No.6	:	In the Negative.
Point No.7	:	As per final order for the following.

REASONS

IX) Points No.1 to 5: These points are inter-connected, hence they are taken-up together for common discussion and consideration in order to avoid the repetition of facts.

(A) The Plaintiff who has examined himself as P.W-1 by filing affidavit evidence has reiterated the contents of the plaint and in his further examination-in-chief he has produced and got marked the certified copy of M.E.No.5/1996-97 dated:26-04-1997 is marked as Ex.P-1 and certified copy of M.R.No.8/2006-07 is marked as Ex.P-2 and certified copy of M.R.No.24/2007-08 which is marked as Ex.P-3 and certified copy of M.R.No.T6/2017-18 which is marked as Ex.P-4 and certified copy of M.R.H14/2018-19 is marked as Ex.P-5. He has also produced certified copies of 3 R.T.C. extracts pertaining to Sy.No.24/☺ for the year 1988-89 to 1999-2000 which are marked as Ex.P-6 to Ex.P-9 respectively and also produced the computerized R.T.C. of Sy.No.24/*/1 for the year 2018-19 which are marked as Ex.P-10.

On perusal of Ex.P.-1 which is M.E.No.5/1996-97 dated:26-04-1997 and Ex.P-6 to Ex.P-9 which are certified copies of R.T.C. extracts pertaining to suit schedule property bearing Sy.No.24/☺ for the year 1988-89 to 1999-

2000 reveals that the suit schedule property is ancestral and joint family property of plaintiff. On perusal of Ex.P-2 which is M.R.No.8/2006-07, Ex.P-3 of M.R.No.24/2007-08 and Ex.P-4 of M.R.No.T6 for the year 2018-19 the name of plaintiff appears as owner to the extent of 02 acres, 03 acres 23 guntas respectively. As per Ex.P-4 the total extent of Sy.No.24*/³ is 02 acres 23 guntas. On perusal these documents clearly reveals that the suit schedule property is an ancestral and joint family property of the plaintiff who has inherited it from his ancestors. Plaintiff has produced Ex.P-5 which is the M.R.H14/2018-19 on perusal of the same reveals that name of Hanumantha S/o Lingappa is entered to the extent of 01 acre 38 guntas and who in turn has transferred it to his wife Mallamma W/o Hanumantha as per MR.T9/2014-15 and plaintiff has also produced Ex.P-10 which is the computerized R.T.C. extract of Sy.No.24*/1 for the year 2018-19, on perusal of column No.9 and 12 name of defendant No.1 appears as owner and possessor to the extent of 01 acre 38 guntas and at column

No.10 it is mentioned as MR.H14/2018-19 dated: 18-02-2019 by succession (pothi).

(B) The defendants after due service of suit summons have appeared through their counsel, but inspite of affording sufficient opportunities have not filed any written statement, hence the written statement of defendants is taken as nil on 15-12-2020. The oral and the documentary evidence adduced by the plaintiff has remained unchallenged and unrebutted. The oral and the documentary evidence namely Ex.P-1 to Ex.P-4 and Ex.P-6 to Ex.P-9 has got presumptive value in the eye of law as per provision of Section 133 of Karnataka Land Revenue Act unless the contrary is proved. The plaintiff by adducing oral and documentary evidence namely Ex.P-1 to Ex.P-10 has proved his title/ownership and his lawful possession and enjoyment over the suit schedule property and also by producing Ex.P-5 and Ex.P-10 has proved the alleged interference of the defendants over the suit schedule property. Plaintiff has specifically pleaded that the suit

schedule property is his ancestral and joint family property which he has succeeded after the death of his father and name of his mother was entered as minor guardian as he was minor at the time of death of his father and when partition took place in the family and also produced Ex.P-1 and Ex.P-6 to Ex.P-9 and Ex.P-2 to Ex.P-4 to substantiate his said contentions. The oral and the documentary evidence adduced by the plaintiff has remained unchallenged and unrebutted. Though the defendants have appeared through their counsel but inspite of affording sufficient opportunities have not filed any written statement, hence the court is constrained to draw an adverse inference against defendants Under Section 114(g) of Indian Evidence Act. Plaintiff has produced Ex.P-5 and Ex.P-10 to prove the alleged interference of defendants over the suit schedule property. It is also well established principles of law that mere entries of names neither confers nor extinguishes the rights of any person. Plaintiff by producing the oral and documentary evidence has proved

the allege interference of defendants over the suit schedule property, hence the plaintiff is entitle for the relief of declaration and permanent injunction as sought for in the plaintiff. Hence point No.1 to 5 are answered in the affirmative.

X) Point No.6: The plaintiff has sought the relief of rectification of R.O.R. of the suit schedule property.

As per provisions of Section 61 of Karnataka Land Revenue Act, the jurisdiction of the Civil Court is ousted, hence Civil Court cannot give such directions and it is the plaintiff who should approach the concerned authority seeking the said relief, hence point No.6 is answered in the Negative.

XI) Issue No.7: For the reasons stated and discussed as above, I proceed to pass the following:

ORDER

The suit of the plaintiff is hereby decreed with cost.

Plaintiff is hereby declared as owner of suit schedule property and consequentially defendants are hereby restrained by an order of permanent injunction from causing any interference in the peaceful possession and enjoyment of the plaintiff over Suit schedule property.

Draw decree accordingly.

(Dictated to the stenographer transcribed, computerized and printout taken by him, corrected and then pronounced by me in the open court on this the 1st day of April, 2021)

(Smt. Y.L.Ladkhan)
B.A.LL.B. (Spl)
Senior Civil Judge and JMFC,
Devadurga.

ANNEXURES

1. List of witness examined on behalf of Plaintiff.

P.W-1: Sabanna S/o Late. Bheemanna.

2. List of documents marked on behalf of Plaintiff.

Ex.P-1 : Certified copy of M.E. extract.
Ex.P-2 to Ex.P-5 : Certified copy of M.R extracts.
Ex.P-6 to Ex.P-9 : Certified copies of RTC extracts.
Ex.P-10 : Computerized RTC Extract.

3. List of witness examined on behalf of defendants.

-Nil-

4. List of documents marked on behalf of defendants.

-Nil-

(Smt. Y.L.Ladkhan)
B.A.LL.B (Spl)
Senior Civil Judge and JMFC,
Devadurga.