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Presented on : 28-06-2022
Registered on : 28-06-2022
Decided on : 29-02-2024
Duration: 01 yrs, 07 months, 29 days

IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
DEVADURGA

Present:
Sri.Hanumanth Satwik.,LL.M,

Senior Civil Judge & JMFC, Devadurga.

DATED : THIS THE 29th DAY OF FEBRUARY 2024.

O.S.No.75/2022

- Plaintiffs :1. Sri.Prahalad Rao S/o. Late Narsing
Rao Kulkarni, Age: 70 years,
Occ: Business, R/o.H.No.8-11-180/212,
Vidyanagar, Raichur-584102.
2. Sri.Jeevan Rao S/o. Late Narsing
Rao Kulkarni, Age: 74 years,
Occ: Retired employee,
R/o.NOG Colony, Raichur-584102.
3. Sri.Subba Rao S/o. Late Narsing
Rao Kulkarni, Age: 64 years,
Occ: Retired employee, R/o.Bangalore.

(By Sri.H.M., Advocate)

--V/s--

- Defendants:1. Smt.Hanumanthi W/o. Saidappa,
Age: 59 years, Occ: Household,



2. Sri.Mallesha S/o. Hanumantha,
Age: 34 years, both are R/o. Honakuni village,
Tq:Devadurga, Dist: Raichur.

(Exparte)

O.S.No.74/2022

- Plaintiffs :1. Sri.Prahalad Rao S/o. Late Narsing
Rao Kulkarni, Age: 70 years,
Occ: Business, R/o.H.No.8-11-180/212,
Vidyanagar, Raichur-584102.
2. Sri.Jeevan Rao S/o. Late Narsing
Rao Kulkarni, Age: 74 years,
Occ: Retired employee,
R/o.NOI Colony, Raichur-584102.
3. Sri.Subba Rao S/o. Late Narsing
Rao Kulkarni, Age: 64 years,
Occ: Retired employee, R/o.Bangalore.

(By Sri.H.M., Advocate)

--V/s--

- Defendants:1. Smt.Hanumanthi W/o. Saidappa,
Age: 59 years, Occ: Household,
2. Sri.Mallesha S/o. Hanumantha,
Age: 34 years, both are R/o. Honakuni village,
Tq:Devadurga, Dist: Raichur.

(Exparte)

JUDGMENT

The present suits are for the reliefs of possession and permanent injunction.



2. By the order of this court dated 14.12.2023 passed in O.S.No.75/2022 and 74/2022, the suit bearing O.S.No.74/2022 was consolidated with O.S.No.75/2022.

3. The case of the plaintiffs of O.S.No.75/2022 is as follows;

They are the owners of the suit property. They instituted O.S.No.60/2016 for the relief of declaration, injunction and for rectification of ROR. The said suit came to be decreed. The defendants challenged the judgment passed in O.S.No.60/2016 in R.A.No.23/2019. They filed another suit bearing O.S.No.59/2016. This court clubbed both the suits and passed a common judgment. The Hon'ble court of IInd Addl. District and Sessions Judge at Raichur partly set aside, the judgment and decree passed in O.S.No.59/2016 clubbed with O.S.No.60/2016. Further, the Hon'ble court accorded them the liberty to file fresh suit seeking the relief of recovery of possession and permanent injunction against the defendants. Therefore, the present suit is filed. The findings of the Hon'ble Appellate Court about their ownership has attained finality. In this regard, plaintiffs pray as above.

4. The case of the plaintiffs of O.S.No.74/2022 is as follows;

They are the owners of the suit property. They instituted O.S.No.59/2016 for the relief of declaration, injunction and for rectification of ROR. The said suit came to be decreed. The



defendants challenged the judgment passed in O.S.No.59/2016 in R.A.No.22/2019. They filed another suit bearing O.S.No.60/2016. This court clubbed both the suits and passed a common judgment. The Hon'ble court of IInd Addl. District and Sessions Judge at Raichur partly set aside, the judgment and decree passed in O.S.No.59/2016 clubbed with O.S.No.60/2016. Further, the Hon'ble court accorded them the liberty to file fresh suit seeking the relief of recovery of possession and permanent injunction against the defendants. Therefore, the present suit is filed. The findings of the Hon'ble Appellate Court about their ownership has attained finality. In this regard, plaintiffs pray as above.

5. In both the suits bearing O.S.No.74/2022 and O.S.No.75/2022, the defendants remained exparte.

6. Considering the plaint and the documents on record in O.S.No.75/2022 following points arise for my consideration:

P O I N T S

1. Whether the plaintiffs prove that the defendants are in illegal possession of the suit property?
2. Whether the plaintiffs are entitled for the relief sought for?
3. What order or decree?



7. Considering the plaint and the documents on record in O.S.No.74/2022 following points arise for my consideration:

P O I N T S

1. Whether the plaintiffs prove that the defendants are in illegal possession of the suit property ?
2. Whether the plaintiffs are entitled for the relief sought for?
3. What order or decree?

8. The plaintiffs in both the suits got examined plaintiff no.1 of the respective suits as P.W-1. The plaintiffs got marked Ex.P-1 to Ex.P-43 in O.S.No.75/2022 and got marked Ex.P.1 to 5 in O.S.No.74/2022 and closed their side.

9. Heard arguments of the counsel for the plaintiffs of both the suits.

10. My findings for the above points are as under.

Point No.1 of O.S.No.75/22 & 74/22: In the negative.

Point No.2 of O.S.No.75/22 & 74/22: In the negative.

Point No.3 of O.S.No.75/22 & 74/22 : As per final order

For the following;



R E A S O N S

11. **Point No.1 of O.S.No.75/2022:-** It is the case of the plaintiffs that in view of the findings of the Hon'ble court of IInd Addl. District and Sessions Judge at Raichur in R.A.No.23/2019, the present suit came to be filed. In this regard, PW1 in his affidavit filed in lieu of examination-in-chief supported the plaint averments.

12. Be that as it may, in the present case there are neither pleadings nor evidence to show that the defendants are in illegal possession of the suit property. So also, the plaintiffs did not produce any documents to show that the defendants are in possession of the suit property as on the date of the institution of the suit. In the absence of necessary pleadings and evidence about the aforesaid particulars, it is not possible to find whether the defendants are in illegal possession of the suit property. In these circumstances, considering the evidence adduced and the documents produced, I am of the view that the plaintiffs failed to prove that the defendants are in illegal possession of the suit property. Accordingly, I answer point no.1 in the negative.

13. **Point No.1 of O.S.No.74/2022:-** It is the case of the plaintiffs that in view of the findings of the Hon'ble court of IInd Addl. District and Sessions Judge at Raichur in R.A.No.22/2019, the present suit came to be filed. In this regard, PW1 in his affidavit filed in lieu of examination-in-chief supported the plaint averments.



14. Be that as it may, in the present case there are neither pleadings nor evidence to show that the defendants are in illegal possession of the suit property. So also, the plaintiffs did not produce any documents to show that the defendants are in possession of the suit property as on the date of the institution of the suit. In the absence of necessary pleadings and evidence about the aforesaid particulars, it is not possible to find whether the defendants are in illegal possession of the suit property. In these circumstances, considering the evidence adduced and the documents produced, I am of the view that the plaintiffs failed to prove that the defendants are in illegal possession of the suit property. Accordingly, I answer point no.1 in the negative.

15. **Point No.2 of O.S.No.75/2022:-** In the case at hand, the plaintiffs failed to prove that the defendants are in illegal possession of the suit property. In these circumstances, the plaintiffs are not entitled for the reliefs sought for. Accordingly, I answer point no.2 in the negative.

16. **Point No.2 of O.S.No.74/2022:-** In the case at hand, the plaintiffs failed to prove that the defendants are in illegal possession of the suit property. In these circumstances, the plaintiffs are not entitled for the reliefs sought for. Accordingly, I answer point no.2 in the negative.

17. **Point No.3 O.S.No.75/2022 and O.S.No.74/2022:-** In view of the aforesaid reasons, I proceed to pass the following,



ORDER

Suit bearing O.S.No.75/2022 and O.S.No.74/2022 of the plaintiffs are hereby dismissed with cost.

Keep the copy of the judgment in O.S.No.74/2022.

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 29th day of February, 2024).

(Sri.Hanumanth Satwik)
Senior Civil Judge and JMFC,
Devadurga.

A N N E X U R E S

1. List of witness examined on behalf of plaintiffs in O.S.No.75/2022:
P.W-1: Prahalad Rao S/o. Late Narsing Rao Kulkarni.
2. List of documents marked on behalf of plaintiffs in O.S.No.75/2022:
Ex.P-1 : Certified copy of Plaint in O.S.No.60/2016.
Ex.P.2 : Certified copy of Plaint in O.S.No.65/2016.



Ex.P.3 : Common Judgment in
O.S.No.60/2016 and 65/2016.

Ex.P.4 : Common Judgment in
R.A.No.23/2019 and 22/2019.

Ex.P.5 : Common Decree in
O.S.No.60/2016 and 65/2016.

Ex.P.6 to 9: Records of Rights.

Ex.P.10 : Mutation.

Ex.P.11 : Attestation of Family Tree.

Ex.P.12 : Stamp.

Ex.P.13 & 14: Khasra Pahani.

Ex.P.15 : Sale deed.

Ex.P.16 to 43: Records of Rights.

3. List of witness examined on behalf of defendants
O.S.No.75/2022:

-Nil-

4. List of documents marked on behalf of defendants
O.S.No.75/2016:

-Nil-

5. List of witness examined on behalf of plaintiffs in
O.S.No.74/2022:

P.W-1: Prahalad Rao S/o. Late Narsing Rao Kulkarni.



6. List of documents marked on behalf of plaintiffs in O.S.No.74/2022:

- Ex.P-1 : Certified copy of Plaint in O.S.No.59/2016.
- Ex.P.2 : Certified copy of Plaint in O.S.No.64/2013.
- Ex.P.3 : Written Statement in O.S.No.64/2013.
- Ex.P.4 : Written Statement in O.S.No.59/2016.
- Ex.P.5 : Written Statement in O.S.No.60/2016.

7. List of witness examined on behalf of defendants O.S.No.74/2022:

-Nil-

8. List of documents marked on behalf of defendants O.S.No.74/2016:

-Nil-

(Sri.Hanumanth Satwik)
Senior Civil Judge and JMFC,
Devadurga.