

KAMD700007152022



**IN THE COURT OF THE
III ADDITIONAL DISTRICT AND
SESSIONS JUDGE, MANDYA,
[SITTING AT SRIRANGAPATNA].**

Dated this the 11th day of March, 2024

PRESENT

Sri. Gopalkrishna Rai T.

III Addl. District and Sessions Judge, Mandya
[Sitting at Srirangapatna]

R.A./5032/2022

Appellant : Neelamma W/o Paramashetty, 53
years, Agriculturist, No.327,
Jayanagara Badavane, K.R.Pete
Town, Mandya District.

By Sri/Smt. BRL, Advocate.

-Vs-

- Respondents: 1. Chief officer, Town Panchayath,
K.R.Pete Town.
2. Shivarudraiah S/o Doddaiiahshetty,
77 years.
3. Dhanalakshmi W/o K.Shivarudraiah,
62 years.
4. Jayarama S/o Nanjegowda, 52 years.

5. Govindaraju S/o Ramashetty, 47 years.

All are residents of Jayanagara Badavane, K.R.Pete Taluk, Mandya District.

**By Sri HR, Advocate for R1,
Sri KKL, Advocate for R2 to 5.**

Date and nature of the : Against the Judgment and
Judgment and Decree Decree passed in
appealed against: O.S.No.130 of 2006
dated 14.10.2022 by the
Senior Civil Judge and
JMFC, K.R.Pete.

Date of Institution of Appeal : 14.11.2022

Date of Judgment: : 11.03.2024

Duration of Judgment: : 1 year 3 months 27 days.

JUDGMENT

Being aggrieved by the Judgment and Decree in O.S.No.130 of 2006 dated 14.10.2022 on the file of Senior Civil Judge and JMFC, K.R.Pete, the plaintiff has preferred the present appeal under Order XLI Rule 1 r/w Section 96 of C.P.C.

2. For the sake of convenience the parties herein are referred to as per their litigative status before the trial court.

3. Before the Trial Court the plaintiff has filed the suit for declaration and permanent injunction.

4. Brief facts of the case of the plaintiff is as follows:-

The plaintiff is the absolute owner in possession and enjoyment of the suit schedule property. The same was purchased by her under Registered Sale Deed dated 28.08.1992. Defendant No.1 at the behest of other defendants is trying to form the road in the suit schedule property and are interfering with plaintiff's possession. The same has constrained the plaintiff to institute the suit.

5. The defendants have filed their written statement and contended as follows:

The vendor of the plaintiff had no right to alienate the suit schedule property. The plaintiff is not in possession of the same. Defendant No.1 had formed road long back and electric poles have been erected. The plaintiff has filed a

false suit with larger extent. On these among other grounds, it is prayed to dismiss the suit.

6. Based on the rival pleadings the trial Court has framed the following issues :

ISSUES

1. Whether plaintiff proves that she is the absolute owner in possession of suit schedule land?
2. Whether plaintiff proves the alleged interference of defendants?
3. Whether the suit is not tenable in the present form, as contended in the written statement of defendants 2 to 5?
4. Whether plaintiff is entitled relief sought for?

7. In order to substantiate his case, the plaintiff has got herself examined as PW-1 and one witness examined as PW-2 and got marked 7 documents as at Ex.P-1 to Ex.P-7. On behalf of the defendants, defendants 2 and 5 examined as DW-1 and 2. Two other witnesses examined as DW-3 and DW-4 and got marked documents as at Ex.P-1 to 15.

8. In addition to it, the Surveyor who is appointed as Court Commissioner is examined as Ex.C-1 and got marked the documents Ex.D-7.

9. After hearing arguments the learned trial judge has recorded his findings on issue No.1,2 and 4 in the negative and issue No.3 in the affirmative and dismissed the suit of the plaintiff with cost.

10. It is this Judgment of the Trial Court challenged by the plaintiff on the following grounds;

- a) The Trial Court did not frame proper issues.
- b) The Trial Court has not properly understood the boundaries mentioned in Ex.P-2.
- c) The Trial Court ought not to have appreciated the facts to the effect that road is passing through Sy.No.262/2.
- d) The Trial Court has failed to appreciate that the suit schedule properties and the property in which house is constructed are altogether different.

- e) The Trial Court has not compared with the evidence produced by the plaintiff.
- f) The Trial Court ought not to have given much weightage to the report of the Court Commissioner, which is against registered Sale Deed.
- g) The vendor of the plaintiff had no right to sell any property to defendants 2 and 3.
- h) The Trial Court has failed to appreciate the evidence in a proper perspective. Hence, prayed to allow the appeal and to dismiss the Judgment and Decree.

11. Heard arguments of both side. Perused the materials placed on record.

12. Now, the points that are arisen for the due consideration of this Court:

1. Whether the findings of the Trial Court that the plaintiff has failed to prove her ownership and possession over the suit schedule property is stands for reasons?

2. Whether the Trial Court is justified in holding that the plaintiff has failed to prove alleged interference?
3. Whether the suit of the plaintiff in the present form is maintainable?
4. Whether the Judgment and Decree of the Trial Court calls for interference?
5. What order?

13. The findings of this Court to the aforesaid points for consideration are;

- Point No.1 : In the affirmative
Point No.2 : In the affirmative
Point No.3 : In the negative
Point No.4 : In the negative
Point No.5 : As per final order for the following;

REASONS

14. **Points 1 and 2 :** It is the contention of the plaintiff Neelamma wife of Paruvashetty that she purchased 8 guntas of land in Sy.No.262/3 of K.R.Pete under Sale Deed dated 28.08.1992. In order to substantiate her contention taken in the plaint, she stepped into the witness

box as PW-1. It is the evidence of PW-1 that she has been in possession and enjoyment of the suit schedule property by virtue of Sale Deed dated 28.08.1992. In order to substantiate her title over the schedule property measuring 8 guntas situated on the East by Katte, West by land of Shivarudrappa, North by site of Paruvashetty and South by property of Jayaramu and others, she placed reliance on Ex.P-1 Sale Deed dated 28.08.1992. In this case the defendants have filed their written statement. They have not challenged Ex.P-1 Sale Deed dated 28.08.1992 executed by Bhairashetty and others in favour of the plaintiff.

15. It is the contention of the plaintiff that the defendants have no manner of right, title or possession over the schedule property and defendant No.1 at the behest of other defendants and some political persons is trying to form a road in the suit schedule property. Thus, in the given circumstances of the case, it is for the plaintiff to establish the fact that she has been in possession and enjoyment of 8 guntas of land in Sy.No.262/3 of K.R.Pete as described in the schedule. The evidence of PW-1 in chief examination would clearly show that without any manner of right, title or possession over the property, at the instance of other

defendants, defendant No.1 is making attempt to form road over the schedule property.

16. It is the contention of the plaintiff that when defendant No.1 made an attempt to form road over the suit schedule property, she got issued Ex.P-4 notice and the same was served to defendant No.1 under Ex.P-5 postal acknowledgement. The service of notice as per Ex.P-4 as per Ex.P-5 to defendant No.1 is not in dispute. In addition to it, defendant No.1 being a statutory body has not chosen to file any written statement. Thus, in the given circumstances of the case, it can be said that the plaintiff got issued notice through her Advocate calling upon defendant No.1 not to form road over the suit schedule property.

17. In order to show that the Vendor of the plaintiff had property right over Sy.No.262/3, she has produced certified copy of Sale Deed dated 07.04.1948. The genuineness or otherwise of Ex.P-6 is not at all denied or disputed by the defendants. However, it is for the plaintiff to establish the fact that she has been in possession and enjoyment of 8 guntas of land by virtue of Ex.P-1 Sale Deed dated 28.08.1992.

18. It is relevant to note that no evidence is produced to the effect that before the execution of Ex.P-1 Sale Deed dated 28.08.1992, the Vendor of the plaintiff or the plaintiff have got measured the property and fixed the boundary. No doubt, the contents of Ex.P-6 Sale Deed dated 07.04.1948 and boundary mentioned therein is clearly corroborate with the boundary shown in Ex.P-1 Sale Deed and the schedule given in the plaint.

19. The evidence of PW-1 that the defendants without any manner of right are making hectic efforts to form road over the suit schedule property, is in accordance with the plaint pleadings. In fact PW-1 during the course of her cross-examination has deposed that she had purchased Sy.No.262/3 from Bhairashetty and others to an extent of 8 guntas. It is also her evidence that property purchased by her husband is bounded on the East by katte, West by land of Shivarudrappa, North by land of Jayaramanna and South by schedule property. This evidence of PW-1 is in tune with the contents of Ex.P-1 Sale Deed.

20. It was suggested to PW-1 that Sy.No.262/3 measuring 10 guntas was got converted for non agricultural

purpose. However, she has deposed that Dasashetty is in possession of 50 x 50 feet site, Guruswamy is in possession of 50 x 25 feet site and Praruvashetty is in possession of 100 x 25 feet. Thus, it is clear that several sites were formed by converting the land into non agricultural purpose.

21. It is the evidence of PW-1 that since the defendants have asked them to give their site to form road, they have instituted the suit. However, it is her definite evidence that she does not know conversion of 10 guntas of land for non agricultural purpose. It is her definite evidence that after the purchase of the property, they have not got measured the property covered under the Sale Deed. According to her, on the East of the suit schedule property there is site of defendants 2 and 3. Thus, one thing is clear that the defendants are not strangers to the plaintiff. On the other hand, they are having property on the Western side of the schedule property. It is her evidence that after purchase of 8 guntas of land each by herself and her husband, they have already constructed a house over the site purchased by her husband. Thus, it is clear that there is no evidence to the effect that before the purchase of schedule property, there was survey or that after the purchase the plaintiff has got

conducted survey and got identified the property covered under Ex.P-1 Sale Deed.

22. In fact, the plaintiff got examined one Ramakrishnaiah as PW-2. It is his evidence that the plaintiff has been in possession and enjoyment of the suit schedule property. This evidence is in tune with the theory of the plaintiff. But, it is for the plaintiff to show that as has been described in Ex.P-1 Sale Deed, she has been in possession and enjoyment of the schedule property.

23. In order to show that Ex.P-1 Sale Deed is acted upon, Order in MR No. 58/92-93 is produced at Ex.P-2. Ex.P-3 is the RTC of the schedule property. Ex.P-7 is the RTC of Sy.No.262/3D, which is in connection with the properties purchased by defendants 2 to 5.

24. In order to disprove the contention of the plaintiff, defendant No.2 Shivarudraiah is examined as DW-1 and reiterated that his wife had purchased site measuring 45 x 30 feet under Sale Deed dated 07.09.1984. Therefore, it is clear that the Sale Deed of wife of defendant No.2 is much prior to the Sale Deed of the plaintiff. The

existence of property of defendant No.2 as has been defined by him is not denied or disputed by the plaintiff.

25. In fact, DW-1 during the course of cross-examination has deposed that Lakshmiddevamma had purchased Sy.No.262/3. It is also his evidence that the plaintiff got converted 10 guntas of land for non agricultural purpose. According to him as per Ex.D-5, 23 guntas of land has been identified. His evidence would show that in fact 23 guntas of land is not available at the spot. However, according to him he did not conduct any survey. It is very relevant to note that it is not the defendant who had approached the Court for the relief of permanent injunction. On the contrary it is for the plaintiff who has approached the Court seeking the relief of permanent injunction and therefore, burden is cast upon him to prove the fact as provided under Section 101 of the Evidence Act.

26. In the matter, on behalf of defendant No.5 one Govindaraju is examined as DW-2 and he has deposed that as site measuring 50 x 25 feet was purchased by Narasimhaiah under Sale Deed dated 05.10.1984. In this case no evidence is produced to the effect that the

defendants have encroached property covered under Ex.P-1 Sale Deed dated 28.08.1992. It is the only contention of the plaintiff that defendant No.1 on behalf of other defendants is making hectic efforts to have right over the schedule property. It is the definite evidence of DW-2 in cross-examination that they have no right over the property purchased by the plaintiff. Thus, it is clear that the properties claimed by defendants 2 to 5 and plaint schedule property are altogether different properties.

27. In this case defendant No.1 Balarama is examined as DW-3 on behalf of defendant No.2, 3 and 5. It is his evidence that defendant No.3 Dhanalakshmi has purchased site measuring 45 x 30 feet and Govindaraju has purchased site measuring 25 x 50 feet. According to him, 8 guntas of land in Sy.No.262/3 is not available as has been contended by the plaintiff. According to him he does not possess any land in Jayanagara Extension. It is his evidence that he has seen the site of defendant No.2. According to him, defendant No.2 Shivarudraiah or defendant No.3 Dhanalakshmi have not constructed house over the sites purchased by them.

28. Another witness by name Anantha is examined as DW-4 and he has reiterated the evidence of DW-3. In this case, the evidence of DW-1 to 4 is in tune with the contention taken by the defendants.

29. It is the definite contention of the plaintiff that, she has been in possession and enjoyment of the suit schedule property by virtue of Sale Deed dated 28.08.1992. Therefore, it is for her to establish that the suit schedule property as described in the schedule was in existence as on the date of her purchase of the property. In fact, the defendants have produced certified copies of Sale Deed dated 07.05.1984 at Ex.D-1. A perusal of this document would show that Shivarudraiah had purchased site measuring 45 x 30 feet from one Lakshmidevamma. Ex.D-2 is the Sale Deed dated 07.11.1984. The contents of Ex.D-1 and Ex.D-2 are in tune with the contention of the defendants. Ex.D-3 is the assessment list of building. Hence, lands liable to taxation for the year 2000-01. A perusal of this document would show that based on the order of the Chief Officer, Town Municipality, K.R.Pete, dated 19.04.1985, khatha of site No.1043/D measuring 45 x 30 feet was mutated in the name of defendant No.2 Shivarudraiah. It is

not the contention of the plaintiff that the property covered under Sale Deed dated 07.11.1984 is over lapping or that defendant No.2 has encroached portion of the schedule property.

30. It is the plaintiff who has approached the Court with a specific defence that she is in possession and enjoyment of the suit schedule property by virtue of the Sale Deed dated 28.08.1992. In fact, the defendants have produced one more assessment list as per Ex.D-1, which would show that Dhanalakshmi / defendant No.2 had purchased Sy.No.1043/e measuring 45 x 30 feet from Lakshmiddevamma. The contents of Ex.D-3 and Ex.D-4 clearly corroborates with the contents of Ex.D-1 and Ex.D-2. Thus, by producing Ex.D-3 and Ex.D-4, defendants 2 and 3 could able to show that they have purchased two sites bearing assessment No.1043/d and 1043/e from Lakshmiddevamma for valuable consideration. However, no evidence is produced to the effect that defendants 2 and 3 have encroached any portion of schedule property.

31. The defendant have produced Hissa Survey / Record of Rights as per Ex.D-5, which would show that

Lakshmiddevamma was in possession of 13 guntas of dry land and she had converted 10 guntas of land for non agricultural purpose and accordingly, khatha was mutated in her name.

32. The defendants have produced original Sale Deed dated 15.10.1984. Under this document Lakshmiddevamma sold property to one Narasimhashetty. Ex.D-8 to Ex.D-12 are tax paid receipts. Ex.D-14 is the license issued by K.R.Pete Interim Mandal Panchayath for putting up constructions in favour of G.D.Ramashetty. Ex.D-15 is the property tax demand register extract standing in the name of G.D.Ramashetty. All these documents demonstrately indicate that certain proceedings were taken place before the Town Municipality and owners have approached it for issuance of license.

33. It is very relevant to note here itself that in order to measure and to identify the suit schedule properties at the first instance one Lokesh was appointed as Court Commissioner and his report was rejected by the Court in view of the objections filed by the plaintiff. Subsequently, one Nagaraju was appointed as Court Commissioner and he

has been examined as CW-2. To this report also the plaintiff has filed objections.

34. It is the definite evidence of CW-2 that in Sy.No. 3B1 there is 13 guntas of land and in Sy.No. 3B2, there is 10 guntas of land. According to CW-2, Paruvashetty sold the one gunta of land to one Rathnamma. It is his definite evidence that he has measured the property as per Hissa Tippani and not as per the existence of property. However, nothing worth is elicited from his mouth to believe the fact that he has acted in contravention with survey rules only to help defendants 2 and 3. On the contrary, on appreciation of evidence of CW-2, it is clear that he has measured the property as per Hissa Tippani.

35. It is the contention of the plaintiff that she is the absolute owner in possession of the suit schedule property by virtue of Sale Deed dated 28.08.1992, but the defendants have denied the possession of the plaintiff over the extent of property narrated in the schedule.

36. It is very appropriate to note here itself that as the plaintiff was not satisfied with the report of the Court Commissioner as per Ex.C-1 and Ex.C-2, he filed

objections. The report of the Court Commissioner would show that the Vendor of the plaintiff had property right over 29 guntas of land as per the documents, but actually he was in possession of only 22 1/2 guntas of land in Sy.No. 263. Therefore, it can be gathered from the evidence of the Court Commissioner and the contents of the report that as has been contended by the plaintiff her Vendor was not in possession of 29 guntas of land and on the contrary, he was in possession of only 22 1/2 guntas of land in survey 263.

37. Though CW-2 is subjected to the process of cross-examination, nothing worth is elicited to disbelieve his evidence that the Vendor of the plaintiff was in possession of only 29 guntas of land in Sy.No. 263. It is also relevant to note that the Court Commissioner has prepared exhaustive report by placing true pictures before the Court but as to why the report of the Court Commissioner needs to be rejected is not explained to the satisfaction of this Court. Thus, it can be concluded that Bhairashetty and his family were in possession of 22 1/2 guntas of land in Sy.No.263 and not more than that.

38. The report of the Court Commissioner and his evidence would show that the plaintiff is not in possession of the property as has been described in the Sale Deed dated 28.08.1992. Thus, on careful appreciation of evidence placed on record, this Court is of the opinion that the Vendor of the plaintiff by name Bhairashetty and his family members did not have any right to alienate excess land as claimed by the plaintiff and her husband.

39. It is the evidence of PW-1 that she is in possession and enjoyment of 8 guntas of land in Sy.No. 263. Whereas, the evidence of CW-2 and the contents of the report and sketch would speak otherwise to the effect that the Vendor of the plaintiff had only 22 1/2 guntas of land in Sy.No.263. No evidence is produced by the plaintiff to the effect after execution of the Sale Deed dated 28.08.1992, defendants 2 and 3 have encroached portion of Sy.No. 263 measuring 8 guntas of land. Thus, the property claimed by the plaintiff as has been described in the schedule is not in existence.

40. The evidence of PW-1 that, the defendants have been trying to form road over the schedule property is in

accordance with the pleadings that are pleaded in the plaint. But, the evidence of CW-2 who had visited the spot and conducted survey would show that the plaintiff is not in possession of entire suit schedule property. Therefore, the plaintiff who has failed to prove her exclusive possession of 8 guntas of land in Sy.No.263/2 shall have to fail in proving alleged interference. In fact, the materials placed on record would show that road is already in existence. Thus, the contention that the defendants are trying to form road is cannot be accepted. Accordingly, points 1 and 2 are answered in the affirmative.

41. **Point No.3** : The plaintiff has pleaded that as if she is in exclusive possession of 8 guntas of land and defendant No.1 at the instance of other defendants making hectic efforts to form road over the same. In fact photo produced by the plaintiff before this Court would show that road has already been formed. Therefore, alleged interference pleaded in the plaint is pigment of imagination.

42. The evidence of CW-2 and sketch as per Ex.P-5 and report as per Ex.P-6 clearly indicate that Vendor of the plaintiff was in possession of only 22 1/2 guntas of land in

Sy.No. 263 and not more than that. Therefore, one thing is clear that as has been contended by the plaintiff he is not in possession of the property described in the schedule. Therefore, the plaintiff ought to have claimed the possession of remaining portion, but he has not chosen to do so. So, in the given circumstances of the case, the suit filed claiming declaration and permanent injunction. Therefore, the Trial Court is justified in holding that the suit in the present form is not maintainable.

43. The learned Trial Judge has placed reliance on the decision reported in **Anathula Sudhakar v/s P.Buchi Reddy [Dead] by legal representatives and others** it was held that, “where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy.” The plaintiff has not claimed the relief of possession. So, the suit shall have to fail. Therefore, the Trial Court is justified in holding that the suit of the plaintiff in the present form is not maintainable. Accordingly, point No.3 is answered in the negative.

44. **Point No.4 :** The counsel for the plaintiff has submitted that the Trial Court did not frame necessary issues. This fact was not raised by her before the Trial Court. The contention that the Trial Court has failed to understand the contents of Ex.P-1 Sale Deed is not proper. No evidence is produced by the plaintiff to show that before purchase of the property in Sy.No. 262/3, she had measured the same. In order to prove the existence of suit schedule property to an extent of 8 guntas, absolutely, there is no convincing evidence produced. The Trial Court has appreciated both oral and documentary evidence in a proper perspective and came to the conclusion that the plaintiff has failed to prove exclusive possession and alleged interference. Therefore, the findings of the Trial Court is in accordance with the evidence placed on record. Hence, it does not call for interference. Accordingly, point No.4 is answered in the negative.

45. **Point No.5. :** In view the findings on points 1 to 4 as has been stated above, this Court proceeds to pass the following:

ORDER

The appeal filed Order XLI Rule 1 r/w Section 96 of C.P.C is hereby dismissed.

Resultantly, the Judgment and Decree in O.S.No.130 of 2006 dated 14.10.2022 on the file of Senior Civil Judge and JMFC, K.R.Pete, is hereby confirmed.

The parties to the appeal shall have to bear their own costs.

Draw decree accordingly.

Send back Trial Court Records along with a copy of Judgment to the Trial Court forthwith.

[Dictated to the Stenographer Grade-1, transcript corrected and pronounced by me in open Court on this the 11th day of March, 2024]

[Gopalkrishna Rai. T]

III Addl. District & Sessions Judge,
Mandya, [Sitting at Srirangapatna].

