

**IN THE COURT OF PRINCIPAL CIVIL JUDGE AND JMFC,
CHANNAPATNA**

Dated This 20th Day of March 2015

PRESENT:

Sri. B.K.Nagesh Murthy
B.A., LL.M.,
Prl., Civil Judge and JMFC,
Channapatna.

O.S 87/2006

Plaintiff :-

1. Smt.L.Showbhagya
W/o Ramachandra,
Aged about 40 years,
2. Sri.H.Ramachandra
S/o late.Karichannegowda,
Aged about 53 years,

Both are R/of Hosurdoddi,
Hamlet of M.B.Halli,
Malur Hobli,
Channapatna Taluk.

(By Sri. K.T.T., Advocate)

V/s

Defendants :-

1. Sri.Nathegowda
Dead bu LR's
- 1(a) Sakamma
W/o Rangaswamy,
D/o Honnegowda,
Aged about 50 years,
R/at Maganoor village,
Malur Hobli,
Channapatna Taluk.

1(b) Mooguregowda
D/o late.Puttalingamma,
Aged about 38 years,
R/at Bommanayakanahalli,
Malur Hobli,
Channapatna Taluk.

2. Thimmegowda
S/o late.Thimmegowda,
Aged about 50 years,

3. Gundanna
S/o late.Thimmegowda,
Aged about 54 years,

4. Rama
S/o Thimmegowda,
Aged about 42 years,

Defendants No.1(a) to 4 are
R/of Mananur village,
Mallur Hobli,
Channapatna Taluk.

(By Sri. J.R., Advocate)

Institution of the suit	10.08.2006
Nature of the suit	Declaration and Possession
Date of commencement of recording of evidence	10.09.2009
Date on which the Judgment was pronounced	20.03.2015
Total Duration	Years Months Days 08 07 10

(Nagesh Murthy B.K)
Prl., Civil Judge and JMFC,
Channapatna.

JUDGEMENT

The plaintiffs have filed the above suit against the defendants for the relief of declaration to declare that, they are the absolute owners of the suit schedule property and to direct the defendants to vacate the encroached portion of the suit schedule property and hand over the possession to the plaintiff and for mesne profit and also for cost of the suit.

2. The brief facts of the case of the plaintiffs as follows:-

That the plaintiffs purchased the suit property i.e., 3 acres of land in Sy.No.467 under registered sale deed dated 10.07.1995. Since the date of purchase the plaintiffs are in possession and enjoyment of the suit schedule property and they are paying land revenue regularly to the government. The defendants have no manner of right title to interfere with the possession and enjoyment of the suit property. The defendants are the adjacent owners of the suit property in Sy.No.333 is a gomala land and

Sy.No.465 are belongs to defendants. Towards the east of the suit property the 1st defendant encroached 29 and 1/4th guntas, towards the northern side the defendants No.2 and 3 encroached to the extent of 0.38 and 1/4th guntas and 0.20 & 1/2 guntas. Towards the southern side the 4th defendant being the owner of Sy.No.465 encroached 0.9 and 1/2 guntas of the suit property without any manner of right title. The defendants are in illegal possession and enjoyment of the plaintiffs property by encroaching the suit property since 2002. The plaintiff is entitle for recovery of encroached land from the defendants by way of due process of law, till then entitle for mesne profits. Thus this suit is filed.

3. In pursuance of service of summons, the defendants No.1 to 4 & 5 are appeared before the court through their respective counsel and filed their written statement. In their written statement filed by the defendants No.1 to 4 denied the sale

deed dated 10.07.1995 relied by the plaintiff and also physical possession and enjoyment of the plaintiffs as owners is denied. Further denied the allegation that they are the strangers the suit property and denied the got surveying of the suit property and also denied alleged encroachment by the defendant. And they contended that, they are in possession of the suit property since their ancestors by way of adverse possession. And contended that the plaintiffs are utter strangers, neither the plaintiffs nor their vendors were not in possession over the suit property, the documents are created and spurious for filing the suit. And also contended that, the suit is barred by time. Thus prayed to dismiss the suit.

4. The defendant No.5 in his written statement also denied the sale deed dated 10.07.1994 in respect of the suit property and also alleged encroachment and contended that he is in possession to the extent of 1 acre 15 guntas in Sy.No.274/2 which is existing on the western side of the plaintiffs property after the Sy.No.468. Towards the western side of the suit property Sy.No.468 is existing, M.Mahadeva is the owner of the property in Sy.No.468 measuring 3 acres.

When such being the case how come the 5th defendant can encroach the suit property. No where the 5th defendant encroached the suit property. Thus he is no way concern to the suit, unnecessarily made him as party. Thus prayed to dismiss the suit.

5. Out of the pleadings of the parties this court framed following:-

Issues

1. Whether the plaintiffs prove that they are absolute owners of the suit schedule property?
2. Whether the plaintiffs prove that towards the eastern side of the suit property the 1st defendant encroached to the extent of 29 and 1/4th guntas, towards northern side the defendants No.2 and 3 encroached to the extent of 0.38 and 1/4th guntas, 20 and 1/2 guntas. And towards the southern side 4th defendant encroached 9 and 1/2 guntas?

3. Whether the plaintiffs are entitled for mesne profit?
4. Whether the plaintiffs are entitled relief of declaration and possession?
5. What order or decree?
6. Trail consisted of the plaintiff examined himself as PW-1 and three more witnesses examined as PW-2 to 4 and also got marked the documents at Ex.p.1 to 13 and closed their side evidence. On the other hand, the defendant No.2 examined himself as DW-1 and got marked the documents at Ex.D.1 to D.8 and closed their side evidence.
7. Heard the arguments from both the sides and perused the evidence and materials placed on record.
8. My answer to the above said Issues as follows:
 - Issue No.1:- In the Affirmative
 - Issue No.2:- In the Affirmative
 - Issue No.3:- There shall be separate enquiry relating to mesne profit

Issue No.4:- In the Affirmative

Issue No.5:- As per final order

for the following:-

REASONS

9. **Issue No.1:-** It is the specific case of the plaintiffs that, they have purchased the suit schedule property under the registered sale deed dated 10.07.1995 and they have been possession and enjoyment of the suit property and paying revenue to the government regularly. The defendants are the adjacent owners, they have no manner of right title in respect of the suit property. Towards the eastern side of the suit property the 1st defendant encroached to the extent of 29 and 1/4th guntas, towards northern side the defendants No.2 and 3 encroached to the extent of 0.38 and 1/4th guntas, 20 and 1/2 guntas. And towards the southern side 4th defendant encroached 9 and 1/2 guntas. The possession of the defendants are illegal. They are enjoying the benefit of the crops derived from the encroached portion over the suit property since 2002.

10. On the other hand, the defence taken by the defendants No.1 to 4 is that, they denied the

alleged sale deed dated 10.07.1995 and possession & enjoyment of the suit property by the plaintiff and states that they never encroached the suit property and they are enjoying the suit property since the period of their ancestors without interference from anybody and also claimed their adverse possession over the suit property. The 5th defendant taken up the defence that, his property bearing Sy.No.274/2 measuring 1 acre 15 guntas existing after Sy.No.468 belongs to one Mahadeva which is towards the western side of the plaintiffs property. The property of the 5th defendant is not the adjacent property of the suit property. Thus the question of encroachment by the 5th defendant does not arise.

11. In support of the case of the plaintiffs, the plaintiff No.2 examined himself as PW-1 who filed affidavit in-lieu of examination-in-chief and reiterated the entire averments made in the plaint and got marked the documents at Ex.p.1 to 13. Ex.p.1 is the sale deed dated 10.07.1995, Ex.p.2 is the sale deed dated 12.07.1995, Ex.p.3 is the certified copy of the sale deed dated 07.08.1975, Ex.p.4 is the Patta book, Ex.p.5 to 7 are the RTC's, Ex.p.8 is the Mutation register extract, Ex.p.9 is

the Survey sketch, Ex.p.10 is the revision settlement akkar bandh, Ex.p.11 is the survey sketch, Ex.p.12 is the mahazar done by surveyor and Ex.p.13 is the RTC in respect of the suit property for the year 2006-07.

12. The PW-2 to 4 are one Sidaiah, Umesh and Suresh Kumar, they are the residents of H.Mogenahalli, Kuridoddi village and Settihalli village. They deposed regarding alleged encroachment made by the defendant in respect of the suit property.

13. On the other hand, the 2nd defendant examined himself as DW-1 who filed affidavit in-lieu of examination-in-chief and reiterated the entire defence taken up in the written statement filed by the defendants No.1 to 4 and produced documents marked at Ex.D.1 to 8. Ex.D.1 to 3 are the Photographs, Ex.D.4 and 5 are the RTC's in respect of Sy.No.155/A & 156, Ex.D.6 is the index of land in respect of Sy.No.154, 155 & 156, Ex.D.7 and 8 are the grant certificate in respect of Sy.No.383 & 82.

14. The plaintiffs in order to prove their ownership over the suit property relied on Ex.p.1

and 2 the same are the sale deeds in respect of the suit property in Sy.No.467 measuring 3 acres executed by Ningamma and her children. The Ex.p.3 is the sale deed in respect of the suit property executed by one Ramachandra infavour of the husband of the plaintiffs executant Ningamma.

15. On the other hand, the defendants No.1 to 4 claims adverse possession in respect of the suit property. But failed to elicit anything from the mouth of PW-1 to 4 in support of their contention. The documents placed by the plaintiff establishes their title and absolute ownership over the suit property. There is nothing on record to disbelieve the absolute ownership of the plaintiffs over the suit schedule property. Accordingly I answer the above **Issue No.1 in the Affirmative.**

16. **Issue No.2:-** The plaintiffs contended that, the defendants being the neighboring land owners encroached the suit property, towards the eastern side the 1st defendant encroached to the extent of 29 and 1/4th guntas, towards northern side the defendants No.2 and 3 encroached to the extent of 0.38 and 1/4th guntas, 20 and 1/2 guntas. And

towards the southern side 4th defendant encroached 9 and 1/2 guntas.

17. On the other hand, the defendants No.1 to 4 contended that, they have not encroached the suit property as alleged by the plaintiff. They are enjoying the suit property since their ancestors they never encroached the suit property and also claim adverse possession over the suit schedule property.

18. In order to prove the alleged encroachment the plaintiff produced the survey sketch marked at Ex.p.9 & 11 on perusal of the same the surveyor mentioned the alleged encroachment by the neighboring land owners of the suit property as contended by the plaintiff.

19. During the course of cross-examination of DW-1 elicited that, they are no way concern to the suit property Sy.No.467 and in page No.6 elicited that except the ancestral property he has not encroached any other property. The defendant not produced any documents to prove their adverse possession of the suit property. In order to prove adverse possession the person who claims the adverse possession must prove and show that on

what date he come in to possession, what was the nature of his possession, whether the factum of possession was known to other party, how long his possession was continued and his possession was open and undisturbed. But in the instant case the defendants No.1 to 4 failed to prove the above said ingredients. Thus I hold that, the defendants failed to prove their adverse possession over the suit property. By taking the defence of adverse possession the defendants indirectly admitted the alleged encroachment as contended by the plaintiff. The Ex.p.9 & 11 are the survey sketches proved the alleged encroachment made by the defendants No.1 to 4. So far as with relating to 5th defendant is concern the plaintiff has not stated anything regarding the encroachment made by him. Thus in view of the above said discussion the plaintiff prove that the 1st defendant encroached to the extent of 29 and 1/4th guntas, towards northern side the defendants No.2 & 3 encroached to the extent of 0.38 and 1/4th guntas, 20 and 1/2 guntas. And towards the southern side 4th defendant encroached 9 and 1/2 guntas as contended by the plaintiff. Accordingly I answer the above **Issue No.2 in the Affirmative.**

20. **Issue No.3:-** The plaintiff claimed mesne profit in respect of the illegal possession by the defendants. In this regard this court is of the view that a separate enquiry to be conducted.

21. **Issue No.4:-** In view of my answer to the Issue No.1 and 2 in the Affirmative. The plaintiff is entitle for the relief of declaration and possession as contended by the plaintiff. Accordingly I answer the above **Issue No.4 in the Affirmative.**

22. **Issue No.5:-** In the result, I proceed to pass the following:-

ORDER

The suit of the plaintiff is hereby decreed.

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

The defendant No.1 towards eastern side of suit property is hereby directed to hand over 0.29 and 1/4th guntas, towards northern side the defendant No.2 and 3 to hand

over to the extent of 0.38 and 1/4th guntas, 20 and 1/2 guntas. And towards the southern side 4th defendant to hand over 9 and 1/2 guntas to the plaintiffs within 3 months.

So far as with relating to mesne profit there shall be separate enquiry.

Draw decree accordingly.

(Dictated to the Stenographer directly on computer, corrected by me and then pronounced in the open court on 20th day of March 2015)

(Nagesh Murthy B.K)
Prl., Civil Judge and JMFC,
Channapatna.

ANNEXURE

Witness examined for plaintiffs:-

PW-1	H.Ramachandra
PW-2	Siddaiah
PW-3	Umesh
PW-4	SureshKumar

Exhibits marked for plaintiffs :-

Ex.p.1	Sale deed dated 10.07.1995
Ex.p.2	Sale deed dated 12.07.1995
Ex.p.3	Certified copy of the sale deed dated 07.08.1975

Ex.p.4	Patta book
Ex.p.5 to 7	RTC's
Ex.p.8	Mutation register extract
Ex.p.9	Survey sketch
Ex.p.10	Revision settlement akkar bandh
Ex.p.11	Survey sketch
Ex.p.12	Mahazar done by surveyor
Ex.p.13	RTC in respect of the suit property for the year 2006-07

Witness examined for Defendants :-

DW-1 M.T.Thimmegowda

Exhibits marked for Defendants :-

Ex.D.1 to 3	Photographs
Ex.D.4 & 5	RTC's in respect of Sy.No.155/A & 156
Ex.D.6	Index of land in respect of Sy.No.154, 155 & 156
Ex.D.7 & 8	Grant certificate in respect of Sy.No.383 & 82

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