

**IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C., AT
KANAKAPURA**

**PRESENT : Smt.Rashmi.M. L.L.B., L.L.M.,
Prl. Civil Judge and JMFC, Kanakapura.**

Dated:10th day of August 2015

O.S.No.392/2011

Plaintiff:

Mr. Abdul Zaheer
S/o late Khalander Hussain Saheb
Aged about 63 years
R/at Thimmuduvadi Post
Kasaba Hobli
Kanakapura Taluk.

(Rep. by Sri. A.T.S., Advocate)

-V/s-

Defendant:

Mr. Abdul Jabbar Sab
President
Aged about 65 years
Jamia Milliyya Trust (R)
Kanakapura Town

(Rep. by Sri. R.C., Advocate)

Nature of the suit : Declaration & Injunction Suit

Date of institution of the suit : 16-12-2011

Date of the commencement of
recording of the evidence : 03-01-2014

Date on which the Judgment

was pronounced : 10-8-2015

Total duration : Years Months Days
03 07 24

JUDGMENT

The suit filed by the plaintiff for a judgment and decree to declare that he is the owner in possession and enjoyment of 'B' suit schedule property, also to declare that plaintiff is the mortgagee of the 'A' suit schedule property, to declare that the registered gift deed dated: 22-7-1995 in favour of the defendant null and void not binding on the plaintiff and consequential reliefs as this Hon'ble Court deems fit in the interest of justice and equity.

2. The plaint averments are as follows:

It is the case of the plaintiff that the agricultural land bearing Sy.No.105/7 measuring 0.08gunas situated at Chikkamuduvadi village, Kasaba Hobli, Kanakapura Taluk which is hereinafter referred as 'A' schedule property. It is originally belonged to Syed Sarver Sab S/o Syed Khasim Sab of Thimmasandra village, Kasaba Hobli, Kanakapura Taluk and he was in possession and enjoyment of the 'A' schedule property as its absolute owner and katha was made out in his name. For his legal necessity he had mortgaged the suit schedule property for Rs. 500/- in favour of Khalander Saheb S/o Khasim Saheb @ Baba Saheb who is the father of the plaintiff under registered usufructuary mortgage deed dated: 24-8-1950 which is duly registered in the office of Sub-

Registrar, Kanakanahalli and he inducted his father in possession and enjoyment of the 'A' suit schedule property. After such his father was in possession and enjoyment of the 'A' schedule property along with his family members till his death. The father of the plaintiff is mortgagee of the 'A' suit schedule property. Till this date the said mortgage has not been redeemed. The plaintiff and his family members are personally cultivating the 'A' suit schedule property by growing ragi, groundnut and other cereal crops over the same. The father of the plaintiff has purchased the property bearing Khaneshumari No.142/330/341(Old Sy.No.No.105/8 measuring 0.07guntas) situated at Thimmasandra village, kasaba Hobli, Kanakapura Taluk which is referred to as 'B' schedule property from Syed Gaffer S/o Syed Khasim Saheb of Thimkmasandra Village, Kasaba Hobli, Kanakapura Taluk under a registered sale deed 11-9-1958 for a valuable consideration. After such purchase the father of the plaintiff was in possession and enjoyment of the same and khatha was made out in the name of the father of the plaintiff. His father has paid tax to the Government. After his father's death the plaintiff is in possession and enjoyment of the 'B' schedule property and khatha made out in the name of plaintiff and he is paying kandayam to the Government. The defendant has no manner of right, title, interest or whatsoever over the suit schedule properties. The defendant is a stranger to the suit schedule properties and has illegally concocted and created

the document styled as Registered Gift Deed dated: 22-7-1995 and illegally got mutated the khatha in respect of the 'A' suit schedule property in his favour. Taking advantage of the same the defendant often illegally interferes with the plaintiff's peaceful possession and enjoyment of the suit schedule properties without valid reason. The plaintiff submits that on 17-11-2011 at about 10-30 am the defendant and his henchmen illegally trespassed into the suit schedule properties and tried to dispossess his peaceful possession and enjoyment of the suit schedule properties without any valid reasons. They were restrained by the timely intervention of the plaintiff and the well wishers in the locality. He has requested the defendant not to interfere with his peaceful possession and enjoyment of the suit schedule properties but the defendant has not cared for his request. He has openly declared that he will dispossess him at any cost. Having no other alternative the plaintiff has filed this suit.

3. Even though the defendant has put his appearance through his counsel, but has failed to file the written statement. Hence, written statement is taken has not filed.

4. Heard.

5. The following points arise for my consideration:

1. Whether the plaintiff has made out a ground for the relief prayed by them?

2. What order or decree?

6. The aforesaid points are answered as follows:

POINT NO.1: In Affirmative

POINT NO.2: As per the final order for the following;

REASONS

7. POINT NO.1: It is the case of the plaintiff that the “A” suit schedule property originally belonged to Syed Sarver Sab S/o Syed Kashim Sab of the Thimmasandra Village, Kasaba Hobli, Kanakapura Taluk. For his legal necessities he had mortgaged the suit schedule property for Rs.500/- in favour of Khalander Saheb S/o Khashim Saheb @ Baba Saheb who is the father of the plaintiff under a registered usufructuary mortgage deed dated:24-08-1950. Thereafter his father was in possession and enjoyment of the same along with his family members till his death. After his death the plaintiff and his family member are in possession and enjoyment of the said suit schedule property as a mortgagee and same has not been redeemed. His father had purchased “B” suit schedule property from Syed Gaffer S/o Syed Khasim Saheb of Thimmasandra Village Kasaba Hobli, registered sale deed dated: 11-09-1958 for valuable consideration. Thereafter, he was in possession and enjoyment of the same. The khatha was made out in the name of his father and he was paying tax for the same. After his death the plaintiff is in possession and enjoyment of “B” suit schedule property and is paying

kandayam to the Government. The defendants having no manner of right, title or interest over the suit schedule property have illegally concocted a registered gift deed dated:22-07-1995 and have illegally got mutated the khatha with respect to "A" of the suit schedule property. The defendant has been illegally interfering with plaintiff's peaceful possession and enjoyment of the suit schedule properties without valid reasons. On 17-11-2011 at about 10:30 am the defendants and henchmen illegally trespassed into the suit schedule properties and tried to dispossess the plaintiff having no other alternative he has filed the present suit.

8. The plaintiff in support of his case has got examined as Pw-1. In his affidavit filed in lieu of examination in chief he has reiterated the facts stated in the plaint. He has got marked 10 documents namely 4 tax paid receipts, 2 RTC extracts with respect to Sy.No.105/7, wherein it is mentioned that 8 guntas of property measuring 125x65 was purchased, RTC with respect to Sy.No.105/8 standing in the name of Syed Iqbal S/o Syed Gafar Saheb, mortgage deed dated:24-08-1950, notice dated:12-12-1972 issued by the Gramapanchyath, sale deed dated:02-10-1973, sale deed under which the plaintiff has purchased the "B" schedule popery, Chikkamuduvadi Gramapanchayath report dated:22-09-2010. Here itself it is pertinent for me to note that the defendants who are aware of the allegation made by the plaintiff have chosen not to cross-

examine the plaintiff. Hence, the cross examination of Pw-1 is taken as nil.

9. On considering the oral and documentary evidence placed before the Court, it is pertinent for me to note that from ExP-1 to 10 it can be safely said that the plaintiff is in peaceful possession and enjoyment of "A" and "B" schedule properties. Further the defendants have chosen not to furnish any document namely the gift deed before the Court to establish that they have any manner right, title or interest over the suit schedule property. As such it can be safely said that the defendant does not dispute the fact that they are interfering with the plaintiff's possession and enjoyment of the suit schedule property. In view of the discussion made supra, I am of the considered view that the plaintiff has proved that he is the absolute owner is in possession and enjoyment of the "B" suit schedule property and he is the mortgagee with respect to "A" suit schedule property after death of his father. Also taking into note stand taken by the both the sides this Court is of the opinion that the registered gift deed dated:22-07-1995 is null and void and is not binding on the plaintiff and is entitled consequential relief and permanent injunction. Hence, I proceed to answer **Point No.1 in Affirmative.**

10. **POINT NO.2** : In view of the above discussion, I proceed to pass the following:

ORDER

The suit of the plaintiffs is decreed with the cost.

The plaintiff is declared as the owner of the "B" schedule property.

Further the plaintiff is declared as a mortgagee with respect to "A" suit schedule property after the death of his father.

The gift deed dated:22-07-1995 is declared as a null and void and is not binding on the plaintiff.

The defendant, his agents, servants or any body acting on their behalf are restrained by way of permanent injunction in interfering with plaintiff's peaceful possession and enjoyment of the suit schedule property.

(On-line Dictated given to the Stenographer, typed by him and corrected and pronounced by me in the open court on this 10th day of August 2015).

(SMT.RASHMI.M)
Prl.Civil Judge & J.M.F.C.,
Kanakapura.

ANNEXURE**1. List of witnesses examined by the plaintiff/s:**

Pw-1 : Abdul Zaheer

2. List of documents produced by the plaintiff/s:

ExP-1 to 4 : Tax Paid Receipts

Ex.P-5 & 6 : RTC Extracts

Ex.P-7 : Mortgage Deed

Ex.P-8 : Notice

Ex.P-9 : Sale Agreement

Ex.P-10 : Garamapachayath Mahazar

3. List of witnesses examined by the defendant/s:

-Nil-

4. List of documents produced by the defendant/s:

-Nil-

**Prl.Civil Judge, &J.M.F.C.
Kanakapura.**

(Vide Separate Order)

ORDER

The suit of the plaintiffs is decreed with the cost.

The plaintiff is declared as the owner of the “B” schedule property.

Further the plaintiff is declared as a mortgagee with respect to “A” suit schedule property after the death of his father.

The gift deed dated:22-07-1995 is declared as a null and void and is not binding on the plaintiff.

The defendant, his agents, servants or any body acting on their behalf or restrained by way of permanent injunction in interfering with plaintiff's peaceful possession and enjoyment of the suit schedule property.

**(SMT.RASHMI.M)
Prl.Civil Judge & J.M.F.C.,
Kanakapura.**