

**IN THE COURT OF THE II ADDL. CIVIL JUDGE AND JMFC.,
AT BHADRAVATHI.**

Dated this 7th day of March 2018.

Present: H.R. Devaraju, B.A.LL.B.,
II Addl.Civil Judge and J.M.F.C.,
Bhadravathi.

ORIGINAL SUIT NO.406/2012

PLAINTIFF/S:

Sri Chandrashekar S/o Late Ramanna,
Aged about 40 years, R/o Coolie block shed,
New Town, Bhadravathi.

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

-Vs-

DEFENDANT/S:

The Tahasildar,
Bhadravathi Taluk,
Bhadravathi.

(Defnt. by A.G.P.)

Date of institution of the suit : 17-07-2012

Nature of the suit : Suit for declaration and
permanent injunction.

Date of commencement of
recording the evidence : 13-09-2017

Date of pronouncing the
Judgement : **07-03-2018**

Duration of the suit: Year/s Month/s Day/s
05 07 21

(H.R. Devaraju)

**II Addl.Civil Judge and J.M.F.C.,
Bhadravathi.**

J U D G M E N T

The plaintiff filed a suit for Declaration and restraining the defendant from keeping the entries under the mutation and R.T.C pertaining to suit schedule property in the name of Government, and permanent injunction restraining the defendant from doing any dispossession of the plaintiff from the suit schedule property.

Schedule property

Agricultural land situated in Bommanakatte village, Bhadravathi in Sy. No. 43 measuring 1 acre, which is bounded by East; belonging to Late Ramanna which is purchased from one Kempaiah S/o Kempaiah of Bommanakatte Village, Bhadravathi Taluk, West: VISL Railway Track now used as Road, North : Road from Bomanakatte to Nanjapura, South: Rangaswamy's land which is now the property of Govt.

2. The brief facts of the case are as follows:

Plaintiff is the owner and in possession of the suit schedule property, it is granted land bearing Sy. No. 43/21 upto an extent of 1 acre as per the Saguvali Chit dated 16.08.1995 issued in favour of the plaintiff by the defendant. The plaintiff's father died on 14.10.2009. After the death of the plaintiff's father the suit schedule property is in possession and cultivation and enjoyment of the plaintiff, he is having right, title and interest over the

property. Plaintiff further submits that his father Ramanna died leaving behind his legal heirs by name Chandrashekara, Nagaraja, Yoshoda, Saroja. Plaintiff is the elder male member of his family. Hence, he has filed present suit on behalf of him and other legal heirs of the said Ramanna.

3. Plaintiff Further submits that his father was enjoying the possession and cultivation of the suit schedule property for a period of more than 35 years and as one Rangaswamy colluding with the officials and creates some documents. Subsequently the said saguvali chit cancelled in the year of 1985. He further submits that on 07.06.2010 under LND.CR 24/2010-11 he received an endorsement stating that one Ramanna S/o Narasappa and after his death his son Chandrashekara is in possession of the land up to an extent of 2 acres situated at Bhommanakatte Village, Bhadravathi Taluk.

4. Plaintiff further submits that defendant got issued endorsement to one Kumara S/o Rangaswamy on 15.04.2011 under LND.CR 17/2011-12 stating that saguvali chit issued infavour of Ramanna S/o Narasappa pertaining to the suit schedule property to an extent of 1 acre on 16.8.1985 is not available in their records. Hence there is no saguvali chit is available in the revenue department, it cannot be given in favour of the said applicant. The defendant created the cloud on the title of the plaintiff, defendant creating suspicion, has made double standards due to the issue of endorsement in favour of one Kumara s/o Rangaswamy. The said Kumara filed

false complaint before the police. On 02.07.2011 at about 12 noon and 4 p.m respectively he approached the defendant but defendant has not gave proper reasons. Hence, plaintiff issued notice under Section 80 of C.P.C to the defendant on 02.07.2011. Even after lapse of 2 months defendant didn't act as per the notice. Hence, he has filed present suit.

5. In response to the suit summons the defendant appeared through AGP and filed his written statement.

6. The brief facts of the written statement of the defendant are as follows:

The defendant has denied the case of the plaintiff and submits that saguvali chit dated 16.12.1995 has not issued from his office and there is no documents available in his office with respect to saguvali chit of the plaintiff. Hence, saguvali chit created by the plaintiff, there is a dispute between Rangaswamy and plaintiff with respect to suit schedule property.

7. Defendant further submits that father of the plaintiff by name Ramanna S/o Narasappa obtain property on 09.01.1960 under lease for 5 years further they have not obtain regular saguvali chit. As per Deputy Commissioner order No. SC/ST 21/2000-01 dated 05.12.2002 katha of the property stands in the name of Government. As per deputy Commissioner order dated 24.01.2008 and Assistant Commissioner Order dated 29.11.1996 property stands in the name of Government. Defendant further submits that Rangaswamy and Government are necessary

party to the suit. He has not made necessary party, hence suit is bad for non joinder of necessary parties, hence pray for dismissal of the suit.

8. Based on the above pleadings this court has framed the following issues;

- 1. Whether the plaintiff proves that he is the absolute owner of the suit schedule property?**
- 2. Whether the plaintiff proves that he is in lawful possession and enjoyment over the suit schedule property as on the date of suit?**
- 3. Whether the plaintiff proves that the defendant is trying to interfere over the suit schedule property?**
- 4. Whether the suit is bad for non joinder of necessary party?**
- 5. Whether the plaintiff is entitled for the relief sought for?**
- 6. What Order or Decree?**

9. In order to prove the above issues, the plaintiff examined himself as P.W.1 and got exhibited 13 documents as Ex.P.1 to Ex.P.13. Further he has examined his witness by name Shivagangaiah s/o Bairappa and closed his side. Defendant has not led any evidence before this Court.

10. Heard the arguments of both sides, Perused the documentary evidence as well as oral evidence of plaintiff.

11. My findings on the above issues are as under:

Issue No.1: In the Negative

Issue No.2: In the Affirmative

Issue No.3: In the Negative

Issue No.4: In the Affirmative

Issue No.5: In the Negative

Issue No.6: As per the final order, for the following;

REASONS

12. **Issue No.1 to 3**: As these issues are inter linked with each other to avoid repetition of facts on the evidence they are taken up together for discussion.

13. It is the case of the plaintiff that suit schedule property is a granted property as per saguvali chit dated 16.08.1995. Since he is in possession and enjoyment of the suit schedule property. But defendant issued endorsement on 15.04.2011 under LND CR 17/2011-12 stating that documents are not available in his office records with respect to saguvali chit dated 16.08.1985. Hence, defendant created cloud on his title over the suit schedule property. To substantiate this he himself examined as PW1 he has filed affidavit in lieu of his examination in chief and he reiterated entire plaint averments.

14. Plaintiff at para no. 2 of the plaint stated that suit schedule land in Sy. No. 43/21 upto an extent of 1-00 acre as per the saguvali chit dated 16.08.1995 issued in favour of the plaintiff by the defendant. But plaintiff has not produced such document before this court. On perusal of the entire records he has produced certified copy of the saguvali chit but said saguvali chit issued on 16.12.1995 infavour of the P. Ramanna s/o Narasappa. In the absence of relevant document plaintiff is not entitle to obtain declaratory relief by this Court. Further plaintiff stated that he is in lawful possession and enjoyment of the suit schedule property. Defendant in his written statement he clearly admits that possession of the plaintiff over the suit

schedule property but defendant contended that plaintiff is in illegal possession of the said property but defendant has not produced any documents before this Court to show that possession of the plaintiff is illegal one. Hence, Court of the opinion that plaintiff is in possession of the suit schedule property.

15. Plaintiff further contended that defendant is trying to interfere over the suit schedule property and further he contended that defendant got issued endorsement on 15.04.2011 under LND CR 17/2011-12 stating that after verifying the ledgers in the department, the saguvali chit dated 16.08.1985 issued infavor of Ramanna S/o Narasappa is not available in their records. Further stated that defendant has interfered without any reasons. To prove interference of the defendant plaintiff has not produced any endorsement before this court said to have been issued by the defendant. Hence in the absence of any relevant document Court can not come to conclusion that defendant has interfere with plaintiff's peaceful possession. Hence I answer Issue No. 1 **Negative**, Issue No. 2 in the **Affirmative**, Issue No. 3 in the **Negative**.

16. **Issue No. 4:** It is relevant to note here that Order 27 Rule 5-A of C.P.C.

5-A Government to be joined as a party in a suit against a public officer – Where a suit is instituted against public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity, the Government shall be joined as

a party to the suit. In the instant case plaintiff himself submits that on 31.05.2012 defendant pass an order to keep the entries of the suit schedule property as Sarkari Phada. As per his own version defendant has ordered on 31.05.2012 before filing of this suit. Under such circumstances government is a necessary party to the suit but plaintiff failed to made necessary parties to the suit for proper adjudication of the suit. Plaintiff further stated that Kumara S/o Rangaswamy filed false complaint before the police and the police have interfered in the better enjoyment of the suit schedule property by the plaintiff. But plaintiff has not pleaded that why said Kumara s/o Rangaswamy lodged complaint against him? Further he obtained endorsement from the defendant under such circumstances said Kumara S/o Rangaswamy dispute the ownership of the plaintiff over suit schedule property hence he is a necessary party to the suit. Hence suit is bad for non joinder of necessary parties. Hence I answer issue No. 4 in the **Negative**.

17. **Issue No. 5:** Plaintiff prayed to declare himself as absolute owner in respect of the suit schedule property. In order to show that he has not produced any records. Moreover, plaintiff failed to prove issue No. 1. Under such circumstances plaintiff is not entitle for declaration that he is the absolute Owner of the suit schedule property.

18. Plaintiff further prayed that restrained the defendant is from keeping the entries under mutation and RTC entries pertaining to suit schedule property in the

name of Government and to retain the entries made in the name of Ramanna S/o Narasappa and subsequently in the name of the plaintiff. Here, this Court is not having jurisdiction to direct or restrain the revenue authorities to mutate the name of the person as the revenue authorities all having their own procedure and after following the procedure laid down under Karnataka Land Revenue Act they mutate the name of the applicant. Hence, as per Karnataka Land Revenue Act read with Section 9 of C.P.C this Court is not having jurisdiction to issue direction or restrain the defendant. Counsel for the plaintiff relied on decision reported in **1995(5) Kar. L.J41** Court gone through the above said decision, said decision is not applicable to the fact and circumstances of this case. Hence for the above stated facts and reasons and finding on issue No. 1, Court answer the Issue No. 5 in the **Negative.**

19. **Issue No.6:** In view of the above stated reasons and findings, Court proceed to pass the following;

ORDER

*The suit of the plaintiff is hereby dismissed
with costs.*

Draw decree accordingly.

(Dictated to the Stenographer Computerized by her, corrected and then pronounced by me in Open Court, on this the 7th day of March 2018)

(H.R. Devaraju)

**II Addl.Civil Judge and J.M.F.C.,
Bhadravathi.**

ANNEXURE

List of witnesses examined on behalf of Plaintiff/s:

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P.W.1. : Chandrashekar
P.W.2. : Shivagangaiah

List of witnesses examined on behalf of Defendant/s:

-Nil-

List of documents exhibited on behalf of Plaintiff/s:

Ex.P.1	Legal Notice
Ex.P.2	Postal Acknowledgment
Ex.P.3	Copy of Application
Ex.P.4	Grant certificate and Saguvali chit
Ex.P.5	Mutation register
Ex.P.6	Tax paid receipt
Ex.P.7	Mahazure
Ex.P.8	Copy of Notice
Ex.P.9	Revenue inspector report
Ex.P.10	Memorandum
Ex.P.11	R.T.C
Ex.P.12	Tax paid receipt
Ex.P.13	R.T.C in Sy. NO. 43/21p

List of documents exhibited on behalf of Defendant/s:

-Nil-

(H.R. Devaraju)
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Judgment pronounced in the open
Court.

(Vide separate judgment)

ORDER

*The suit of the plaintiff is hereby
dismissed with costs.*

Draw decree accordingly.

(H.R. Devaraju)
II Addl.Civil Judge and J.M.F.C.,
Bhadravathi.