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**IN THE COURT OF PRL. CIVIL JUDGE AND
J.M.F.C., BHADRAVATHI**

:Present:

Sri Yathisha.R., B.A.L,LL.B.
Prl. Civil Judge & J.M.F.C.,
Bhadravathi.

O.S.No.326/2016

Dated, the 3rd day of November 2022.

Plaintiffs: Smt.Yellamma
W/o Hanumanthappa
Dead by LRs.

- A] Rangappa S/o Hanumanthappa,
Aged about 54 years, Agricultures,
R/o Agasanahalli Village,
Bhadravathi Taluk
- B] Smt.Gowramma W/o Krishanappa,
Aged about 45 years,
R/o Sharavati Taluk,
Shivamogga,
- C] Girijamma W/o Manjappa,
Aged about 35 years,

R/o Danayakapura Village,
Bhadravathi Taluk.

(By Sri.ANT, Advocate)

-Vs-

- Defendants:
1. Sri.Jabar Sab S/o Late Karim Sab,
 - a) Smt.Jairunabhi
W/o Jabar Sab,
Aged about 60 years,
 - b) Sri.Fazil S/o Jabar Sab,
Aged about 45 years,
 - c) Sri.Anwar Sab S/o Jabar Sab,
Aged about 43 years,

All are agriculturist,
R/o Agasanahalli Village,
Bhadravathi Taluk.

2. Sri.Nagir Sab S/o Nanesab,
Aged about 58 years, Cooli.
3. Sri.Aziz Sab S/o Gaffar Sab,
Aged about 65 years, Cooli.
4. Sri.Suren Babu S/o Nabhisab,
Aged about 40 years, Cooli.
5. Smt.Fathima W/o Bashir Sab,
Aged about 50 years, Cooli.
6. Smt.Shabirabi W/o Baba Sab,
Aged about 60 years, Cooli.

7. Sri Alli S/o Baba Sab,
Aged about 38 years, Cooli.
8. Sri.Hamid Beg S/o Immambeg,
Aged about 46 years, Cooli.
9. Smt.Akkthar Beg W/o Baddesab,
Aged about 55 years, Cooli.

All the defendants are
R/o Agasanahalli Village,
Holehonnur Hobli,
Bhadravathi Taluk.

(By Sri.TMA., Advocate)

20.08.2016

Date of institution of suit:-

Nature of suit:

Declaration and Permanent
Injunction

Date of commencement of
evidence:-

10.11.2017

Date of judgment:-

03.11.2022

Total duration:-

06Yr 02Mts 14Days

(Yathisha.R.,)

Prl. Civil Judge & J.M.F.C.,
Bhadravathi.

JUDGMENT

Suit is one filed seeking relief of Declaration that the Plaintiff 'B' Schedule Property is part and parcel of Plaintiff 'A' Schedule Property and for possession of the same. Consequential relief of Permanent Injunction in respect of Plaintiff 'A' Schedule Property is also sought for.

2. **Brief facts of the case of the plaintiffs are as under:**

a. That, the plaintiff is the absolute owner of property bearing Sy.No.19/4 and katha No.201 of Agasanahalli Village of Holehonnur Hobli of Bhadravathi ad measuring to an extent of 17.08 guntas inclusive of 7 guntas of karab land which is described as the Plaintiff 'A' Schedule Property and will be hereinafter referred as the Plaintiff 'A' Schedule Property for brevity.

b. That the defendants have their respective houses and site properties towards the north of Plaintiff 'A' Schedule

Property. Though the defendants are very well aware of the fact that the plaintiff is the absolute owner of *Plaint 'A' Schedule Property*, they have been making attempts to encroach the same and they have even succeeded in encroaching some 4 guntas of property towards the northern side of *Plaint 'A' Schedule Property* and the said encroached portion is described as the *Plaint 'B' Schedule Property* and same will be referred to hereinafter as the *Plaint 'B' Schedule Property*.

c. The fact of encroachment came to the knowledge of the plaintiff as per the survey held on 21.08.2015. Having come to know regarding the said encroachment, defendants were requested to handover the possession of encroached portion of property to the plaintiff. The defendants did not heed to the said lawful demand. As such, on 03.08.2016 the plaintiff lodged a complaint against the defendants, in response to it the jurisdictional police issued an endorsement stating that the matter is of Civil nature and as

such without there being any other recourse the plaintiff preferred this suit.

3. Upon due service of summons on the defendants, they have made appearance through their respective learned advocate. The defendant No.3 filed written statement in detail which has been adopted by the defendant No.1, 2, 4 to 9 as their written statement as well by filing a memo to that effect.

a. In the written statement, the defendants have denied the entire plaint averments. According to them they have not made any such encroachment over the property belong to the plaintiff as alleged. They have further contended that they are in possession and enjoyment of the property since more than 60-70 years. They have also contended that this suit is filed only with an intention to harass the defendants. With all these contentions it prayed that the suit may be dismissed with costs.

4. Based on the pleadings and other materials placed on hand, my learned predecessor-in-office of this Court has framed the following issues:

1. *Whether the plaintiff proves that the defendants have encroached 'B' schedule property?*
2. *Whether the plaintiff further proves that 'B' schedule property is part of 'A' schedule property?*
3. *Whether the plaintiff proves that she is in possession of 'A' schedule property?*
4. *Whether the suit is properly valued and court fee paid is sufficient?*
5. *Whether the plaintiff is entitled to the reliefs sought for?*
6. *What decree or order?*

5. During the subsistence of proceedings, death of plaintiff, defendant No.1 and 3 has been reported. As such their respective legal representatives have come on record.

To support the plaintiff's case, son of the plaintiff/GPA holder by name Rangappa got examined himself as PW.1 by way of the affidavit filed by him in lieu of his oral examination-in-chief which contains the plaint averments. Through him Ex.P.1 to Ex.P.4 documents are got marked. PW.1 offered himself for cross-examination done at length by the learned advocate for the defendants. Ex.P.1 is the General Power Attorney, Ex.P.2 is the RTC pertaining to the property bearing No.19/4 of Agasenahalli Village of Bhadravathi of the year 2016-17, Ex.P.3 is the Certified copy of Hadubastu Sketch, Ex.P.4 is the true copy of endorsement issued by the SHO of Holehonnur Police Station dated 03.08.2016. The defendants did not choose to give evidence. Accordingly, the case posted for hearing arguments on the main matter.

6. Heard arguments of learned advocate for the plaintiff. In spite of granting sufficient opportunities to the defendants, as they did not choose to submit arguments

either oral or in writing, arguments on behalf of the defendants has been treated as not addressed.

7. I have carefully gone through entire case papers.

My findings on the above issues are as under:

- | | |
|-------------|---|
| Issue No.1: | In the Negative, |
| Issue No.2: | In the Negative, |
| Issue No.3: | In the Negative, |
| Issue No.4: | Yes, plaintiff has properly
valued the suit and the court
fee paid is sufficient. |
| Issue No.5: | In the Negative, |
| Issue No.6: | As per the final orders |

for the following;

REASONS

8. **Issue No.4:** This Court having framed issues on 15.06.217 treated this issue as Preliminary Issue. Having heard on this issue, on 10.08.2017 my learned predecessor-in-office of this Court was pleased to pass orders on this issue as; *“Preliminary Issue No.4 is answered in the Affirmative. The plaintiff has properly valued the suit and*

paid sufficient Court Fee". As already there is an order of this Court on this issue, once again giving findings on this issue would not arise. Accordingly this issue is answered as *"Yes, plaintiff has properly valued the suit and the court fee paid is sufficient"*.

9. **Issue No.1 to 3:** These issues require common appreciation of facts and circumstances of this case. Hence, they are taken up together for discussion in order to avoid the repetition of facts. According to the plaintiff she has become the absolute owner in possession and enjoyment of the Plaint 'A' Schedule Property which is inclusive of 7 guntas of karab land and that the Plaint 'B' Schedule Property is the part and parcel of Plaint 'A' Schedule Property. To substantiate the fact that she is the owner of the same and in possession of Plaint 'A' Schedule Property no oral or documentary evidence has been placed on hand by the plaintiff. No doubt, there is one RTC as per Ex.P.2, mere production of the said document is not suffice to

establish the case of the plaintiff that she is in possession of Plaintiff 'A' Schedule Property as its absolute owner. In addition to this, the plaintiff alleges that the defendants have encroached to an extent of 4 guntas of property towards northern side of the Plaintiff 'A' Schedule Property which is shown as Plaintiff 'B' Schedule Property. They have even stated that the said fact came to their knowledge as per the survey held by the surveyor on 21.08.2015. In order to substantiate the fact that there was a survey held, no supportive documents are placed on record. Apart from that no efforts have been made by the plaintiff to get the surveyor examined before this Court to substantiate the said fact. Examination of so called Surveyor before this Court is necessary for the reason that according to the plaintiff the said survey work was held on 21.08.2015 i.e., prior to the date of filing of this suit.

10. The plaintiff alleges that the defendants have encroached Plaintiff 'B' Schedule Property and as such they

are liable to handover the possession of the same to the plaintiff. In the entire case papers there is no positive evidence placed on hand by the plaintiff to substantiate the fact of encroachment by the defendants. Mere pleading of a fact is not suffice. But, law expects proof of facts which are pleaded with cogent and convincing oral as well as documentary evidence. As the plaintiff did not produced any such proof in this case, this Court is of the opinion that the plaintiff has failed to prove the fact of alleged encroachment by the defendants. In addition to the above observations, it is also pertinent to note that according to the plaintiff the Plaint 'B' Schedule Property is part and parcel of Plaint 'A' Schedule Property. Except the oral evidence given by PW.1 in the form of affidavit which is nothing but replica of the plaint averments, no documents are placed on hand to substantiate the said factor. Hence, I am of the opinion that the plaintiff has failed to prove that the Plaint 'B' Schedule Property is a part of Plaint 'A' Schedule Property.

11. Upon consideration of all these factors, this Court is of the view that mere production of Hadubastu Sketch without examining the alleged surveyor according to the plaintiff who held survey work on 21.08.2015, the version of the plaintiff that the Plaint 'B' Schedule Property forms part and parcel of Plaint 'A' Schedule Property, that the defendants have encroached Plaint 'B' Schedule Property that the plaintiff is in possession Plaint 'A' Schedule Property cannot be believed. Moreover, in the entire case there is no allegation or that the plaintiff has expressed apprehension of the fact that the defendants are making any attempts to interfere with the plaintiff's alleged possession and enjoyment of Plaint 'A' Schedule Property. Such being the case certainly the plaintiff is not entitled to the relief of Permanent Injunction as prayed for. Hence, issue No.1 to 3 are answered in the **Negative**.

12. **Issue No.5:** Keeping in mind the observations made by this Court while giving findings on issue Nos.1 to 4

as above, this Court is of the view that the plaintiff is not entitled to get the reliefs as prayed for. Accordingly this issue is answered in the **Negative**.

13. **Issue No.6:-** In view of my answer to the issue No.1 to 5 as above, I proceed to pass the following:

ORDER

Suit is dismissed with costs.

Office is directed to draw
decree accordingly.

(Dictated to the steno, typed by her, corrected by me and then pronounced in the open Court on 3rd day of November 2022)

(Yathisha.R)

Prl. Civil Judge and J.M.F.C.
Bhadravathi.

Annexures

1. List of witnesses examined on behalf of the plaintiff:-

PW.1 : Rangappa.

2. List of documents produced on behalf of the plaintiff:-

Ex.P.1: General Power Attorney.

Ex.P.2: RTC pertaining to the property bearing

No.19/4 of Agasenahalli Village of
Bhadravathi of the year 2016-17.

Ex.P.3: Certified copy of hadubastu sketch.

Ex.P.4: True copy of endorsement issued by the SHO
of Holehonnur Police Station dated
03.08.2016.

4. List of witnesses examined on behalf of defendants:-

-NIL-

5. List of documents produced by defendants:-

-NIL-

Prl. Civil Judge and J.M.F.C.
Bhadravathi.