

KASM710005262018



**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC.,
SORABA.**

Dated this the 16th day of June 2022

: PRESENT:

Sri Prabhakara Rao. B. Sc., LL.B., (Spl.)
Senior Civil Judge and JMFC.,
Soraba.

Original Suit 40/2018

Plaintiffs:

1. Sri. Ramamurthy
S/o. Late Duttambatta,
Hindu, aged about 75 years,
R/o. Doddakallasandra village,
Bengaluru-62.
Being Manager of the family
Dead by Lrs.,
- 1(a) Dr. A.R. Raghuveer S/o. Ramamurthy,
Hindu, aged about 47 years,
being Manager of joint family of
Ramamurthy. R/o. Dodda Kallasandra,
Bengaluru.

(by Sri. G.S., Adv.)

Vs.

Defendants:

1. Sri. Kotreshappa
S/o. Puttappa Chikkachowti
Hindu, aged about 61 years,
R/o. Hiremagadi, Kolagi Post,
Soraba Taluk.
2. Sri. Lokappa S/o. Puttappa Chikkachowti,
Hindu, aged about 59 years,

3. Sri. Muttappa S/o. Puttappa Chikkachowti,
Hindu, aged about 57 years,

4. Sri. Danappa S/o. Puttappa Chikkachowti,
Hindu, aged about 55 years,

Deft No. 2 to 4 are R/o. Vrutikoppa village,
Ennekoppa post, Anavatti Hobali,
Soraba Taluk.

(by Sri. D.K.P., Adv)

- - -

Date of institution of the suit :	03-08-2018		
Nature of the suit :	For Declaration and possession.		
Date of recording of the evidence:	28-01-2021		
Date of closing of recording of evidence. :	15-03-2022		
Date on which the judgment was pronounced :	16-06-2022		
	Years	Months	Days
Total duration:	03	10	13

JUDGMENT

The suit is for declaration and possession.

2. **The brief facts of the case are that;** the plaintiff has filed this suit as the representative of the joint family. After his death, his son has proceeded with case as his legal heir, representing the joint family. The father of the plaintiff Duttambhatta had 3 sons and 1 daughter. The plaintiff

Ramamurthy, Bhimabhatta and Sripada are the sons and Ambuja is the daughter. At the time of filing the suit, Bhimanbhatta was aged about 68 years and resident of Ramakrishna Nagara, New Delhi. Further, another brother Sripada was aged about 61 years and resident of Hesarugatta Road, Bengaluru. Further, the sister of plaintiff Ambuja was aged about 64 years and residing at Hubballi. The family of plaintiff is the joint family and this suit has been filed by the plaintiff as a Manager of the joint family. The suit schedule properties are the ancestral properties of the plaintiff family. They are barren properties. There are teak wood trees, aged about 100 years and other trees are also grown up in the suit schedule properties. The suit schedule properties are valuable properties. The defendants are the own brothers and their grand father Kotrabasappa had taken the suit schedule properties on lease from grand father of plaintiff by name Gurunathabhatta on 06.07.1925, for an annual rent of ₹6/- which is required to be paid before the "Ugadi" festival of the year. The permanent lease deed was executed in this regard, which was duly registered having SR No. 12/1925-26 at Sub Registrar Office, Soraba on 06.07.1925. After the death of Kotrabasappa, the father of defendants Puttappa has continued said lease and paid annual rent to the father of

plaintiff Duttambhatta. Thereafter, on 30.11.1996, the father of plaintiff has been died. After his death, the plaintiff has become the Manager of the family being an elder member. The plaintiff was working in Indian Air Force and retired in the year 1969. During his life time, the father of defendants- Puttappa was making payment of rent to the father of plaintiff. After the death of the father of plaintiff, the father of defendants used to pay the said rent to the plaintiff. Subsequently, the father of the defendants was died in the year 2004. Thereafter, the defendants had not paid the said rent and violated the condition of the lease agreement dated 06.07.1925. Further, the defendants have also denied the rights of the plaintiff's over the suit schedule properties and declared themselves as owner of it and accordingly, they have filed OS 152/2006, for the relief of permanent injunction and declared themselves as owners of the suit properties. Thereafter, the said suit has been decided on 09.09.2015. The defendants have not paid the rent after the year 2004. Therefore, the plaintiff is entitled to recovery of loss or damages of ₹ 500/- per year from the defendants. Thereafter, on 08.05.2017, the plaintiff, his brother and sister together got issued advocate notice and called upon the defendants to hand over the possession by determining lease on 30.11.2017. It

was directed to hand over the possession on 01.12.2017. The said notice served upon the defendant No. 2 to 4. But, the defendant No. 1 was not received it. Thereafter, on 24-27/11/2017, the defendants had given evasive reply and denied the rights of the plaintiff over the suit schedule properties, in view of the provision of the Karnataka Land Reform Act, even though, the provisions said Act are not applicable to the suit schedule properties. Further, the defendants have also not asserted their rights under the provision of Karnataka Land Reforms Act. Therefore, the plaintiff has filed this suit for declaration and possession of the suit schedule properties.

3. On service of summons, the defendants No. 1 to 4 appeared through the counsel. Thereafter, the defendant No. 1 has filed the written statement and same has been adapted by the defendant No. 2 to 4, by filing a memo in this regard. In the written statement, the defendants have totally denied the case of the plaintiff and terms of lease deed dated 06.07.1925 as contended by the plaintiff in the plaint. However, they admitted the institution of OS No. 152/2006 and contended that the Court has decided that case in their favour on 09.09.2015. It is further contended that after the judgment and decree of OS 152/2006, the plaintiff has no right and title

over the suit schedule properties. It is submitted that the plaintiff has filed a false suit by suppressing the material facts and without there being any cause of action. Further, this defendants have totally denied the issuance of notice on 08.05.2017 and determination of the lease as claimed by the plaintiff. However, in further part of the written statement, it is admitted the receipt of the notice dated 08.05.2017 and stated that a suitable reply has been given to the said reply on 27.11.2017. Further, it is contended that the lease deed dated 06.05.1925, executed by the grand father of the plaintiff Duttambhatta in favour of grand father of defendants Kotrabasappa is a permanent lease and cannot be revoked. Further, it is submitted that the said lease is not in force and stand transferred to and vested in the state government after the Karnataka Land Reforms Act, 1961 came in to force. It is contended that the rights of the plaintiff's family over the suit schedule properties has been lost and now, they cannot claim the title over the suit schedule properties. With all these contentions, the defendant No. 1 has requested to dismiss the suit with cost.

4. That on the basis of pleadings and evidence on record, this Court has framed the issues on 16.06.2021 as below.

1. Whether the plaintiff proves that the suit schedule properties are the ancestral properties of his joint family?
2. Whether plaintiff further proves that his joint family entitled for possession of the suit property?
3. Whether defendants proves that they have perfected the title to suit property by the decree in OS 152/2006, dated 09.09.2015?
4. Whether plaintiff is entitled for the relief as sought?
5. What order or decree?

5. In order to prove the case, the present plaintiff on record has given his evidence as PW-1 and got marked the documents at Ex.P1 to Ex.P42. Thereafter, the defendants have not given their evidence, even after sufficient time. Further, the counsel for the defendants has also not submitted his argument, even after sufficient time. Hence, his side argument has been taken as nil.

6. I have heard the counsel for the plaintiff. I have carefully perused the pleadings, evidence and provisions of law applicable to facts of the case and answered the aforesaid Issues as below.

Issue No. 1 : In the Affirmative.

Issue No. 2 : In the Affirmative..

Issue No. 3 : In the Negative.

Issue No. 4 : In the Affirmative.

Issue No. 5 : As per final order
for the following:

REASONS

7. Issue No. 1 and 3: In order to avoid repetition of pleadings and evidence and as the decision of one has its own bearing on another, I have taken both issues together for consideration.

8. It is the case of the plaintiff that the suit schedule properties are their ancestral joint family properties of their family and their grand father had given it on lease to the grand father of defendants, through lease deed dated 06.07.1925, which has been duly registered at Sub Registrar Office, Soraba. Further, it is the case of the plaintiff that till the death of father of defendants, rent was given to the father of plaintiff as per the lease deed and thereafter, the defendants had not given the lease amount and violated the terms of the lease deed dated 06.07.1925. Further, it is the case of the plaintiffs that from 2004, the defendants have stopped to pay rent and denied the rights of the plaintiff's family over the

suit schedule properties. Further, it is also contended that the defendants have filed O.S. 152/2006 for the relief of permanent injunction by denying the rights of the plaintiff's family over the suit schedule property and the said suit has been decided on 09.09.2015. It is contended that by denying the rights of the plaintiff and by non payment of annual rent as per terms of the lease deed, the family of defendants have lost the rights over the suit schedule properties. Further, it is the case of the plaintiff that he along with other members of the family got issued the advocate notice on 08.05.2017 for determination of lease of the defendants on 30.11.2017 and calling upon them to hand over the possession of the suit schedule properties on 01.12.2017. It is contended that the defendants had issued evasive reply, on 24-27/11/2017, denying the rights of the plaintiff over the suit schedule property in view of the provisions the Karnataka Land Reforms Act, 1961.

9. On the other hand, in the written statement of the defendant No.1, which has been adapted by the other defendants, it is contended that the plaintiff's family had no right over the suit schedule properties as the lease dated 06.07.2025 is a permanent lease, which cannot be revoked. Further, it is also contended that in view of the decree in O.S.

152/2006 also, the plaintiff's family had no right to claim the title over the suit schedule property. Further, it is also contended that in view of the provision of the Karnataka Land Reforms Act, 1961, the plaintiff's family has lost right over the suit schedule properties and now, they are not the owners to claim the possession of the suit properties.

10. In view of the contentions of the defendants that suit is not maintainable in view of the provision of the Karnataka Land Reforms Act, 1961, I have gone through the provisions of said Act to ascertain whether the suit is maintainable. As defined in Section 2(18) of the Karnataka Land Reforms Act, 1961, "land" means agricultural land, that is to say, land which is used or capable of being used for agricultural purposes or purposes subservient thereto and includes horticultural land, forest land, garden land, pasture land, plantation and *tope* but does not include house-site or land used exclusively for non-agricultural purposes. Further, as per Section 44(1) of the Act, all lands held by or in the possession of tenants (including tenants against whom a decree or order for eviction or a certificate for resumption is made or issued) immediately prior to the date of commencement of the Amendment Act, other than lands held by them under leases permitted under section 5, shall, with effect on and from the said date, stand

transferred to and vest in the State Government. The suit properties as described in the plaint schedule are the house sites and not land as defined in the Karnataka Land Reforms Act, 1961. The plaintiff has produced and got marked extracts of the Tax demand register at Ex.P1 to Ex.P3, which clearly proves that suit properties are not land as defined in said Act. In addition to this, the defendants have not produced anything to substantiate their contentions in the written statement in this regard. Therefore, in my considered view, the provisions of the Karnataka Land Reforms Act, 1961 are not applicable to the suit properties and there is not merit in the contentions of the defendants regarding the maintainability of the suit.

11. Now let me consider Ex.P28- the copy of lease deed dated 06.07.1925 through which the defendants have asserted their right over the suit properties. On perusal of Ex.P28-copy of the lease deed dated 06.07.2025, it reveals that it has been executed in between Guruntha Bhatta who is the grand father of plaintiff and Kotrabasappa, who is the grand father of defendants. This is the lease deed in respect of khaneshumari No.65 and khaneshumari No. 66 of Vrittikoppa village, which have now numbered as khaneshumari No.82 and 83. There is no dispute in this regard. As per the recitals of the documents, it reveals that the lessee shall pay annual

rent of ₹ 6/- before “Ugadi” festival of the year. Further, it reveals that the Lessor shall not evict the lessee, unless, the lessor become the defaulter in payment of the rent fixed. It is clearly stated that if the lessee become the defaulter in payment of rent as per the terms of the lease, the lessor or his successors are having the rights to take possession of the properties, leased out. Further, from this document it is clear that suit properties are backyards of lessor. From the terms of lease, duly registered, it is clear that lease is determinable if the lessee becomes defaulter. Section 111 of the Transfer of Property Act, 1882 deals with determination of lease. It reads as below;

111. Determination of lease.—A lease of immovable property, determines—

- (a) by efflux of the time limited thereby;
- (b) where such time is limited conditionally on the happening of some event—by the happening of such event;
- (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event;
- (d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;

(e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;

(f) by implied surrender;

(g) by forfeiture, that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event]; and in any of these cases] the lessor or his transferee gives notice in writing to the lessee of] his intention to determine the lease;

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

12. In in this case the plaintiff has specifically seek determination of lease on the grounds as mentioned in clause (g) and (h) of the aforesaid provision under Section 111 of the Transfer of Property Act. The plaintiff has contended that the defendants have not paid rent after death of their father in the year 2004 and claimed themselves as owners of the suit properties by denying the title of the plaintiff's family in their suit O.S. 152/2006 for the relief of permanent injunction.

13. In order to substantiate the case made out, the plaintiff No.1(a)-Dr. A.R. Raghuveer s/o. Rammoorthy, has

given his oral evidence as PW1 and reiterated the contentions taken in the plaint in the affidavit filed in lieu of his examination in chief and requested to grant the relief as sought in the plaint. During the course of his evidence, Ex.P1 to Ex.P42 are marked. Ex.P1 to Ex.P7 are the extract of tax demand register, having the details of the suit schedule properties. Ex.P8 to Ex.P18 are the tax paid receipts. Ex.P19 to Ex.25 are also the tax paid receipts. Ex.P26 is the certified copy of the photographs. Ex.P27 is the copy of the genealogical tree of the defendants' family. Ex.P27(a) is the notice dated 06.11.2004, got issued by the advocate of defendant No.4 to the Deputy Conservator of Forests., DCF and other Forest Officers and the Secretary of the Village Panchayath, Ennekoppa, objecting for cut and removal of teak trees grown up in the suit schedule properties and transport of the same by the plaintiff and his brother. Ex.P28 is the copy of lease deed dated 06.07.1925. Ex.P29 is a letter to the Panchayath Development Officer by the plaintiff for correction of the tax demand register, wherein, the numbers of the suit schedule properties have been left out from the records. Ex.P30 is the copy of extract of discharge certificate issued by the Head Master, Government Girls School, Anavatti. This certificate is related to the plaintiff 's school. Ex.P31 is the

plaint copy in O.S. 152/2006 instituted by the defendant No.1 herein, against the plaintiff and his brothers. Ex.P32 and 33 are the Judgment and decree in O.S. 152/2006. Ex.P34 is a copy of the deposition of defendant No.1 in O.S.152/2006. Ex.P35 is the issues in the said O.S. 152/2006. Ex.P36 is the copy of the legal notice, dated 08.05.2017. Ex.P37 is the reply notice to the counsel for the defendants dated 24.11.2017. Ex.P38 to 40 are the acknowledgment for receipt of the notice of the plaintiff's counsel. Ex.P41 is the postal cover addressed to the defendant No.1 herein. Ex.P42 is the death certificate of the original plaintiff -Ramamurthy A.D.

14. In the cross examination, the counsel for the defendants has contended that after the judgment and decree in the suit filed by the defendants in the year 2006, the names of the defendants had been mutated to the records of the suit schedule properties and the suit schedule properties are in possession and enjoyment of the defendants. Further, it is contended that the plaintiff's family had no right over the suit schedule properties as their grand father Gurunath Bhat had given up his title over the suit properties to grand father of the defendants Kotrabasappa as per the transaction held in the year 1950. Further, in this cross examination, the counsel for the defendants has contended that since 100 years, the

defendants are paying the tax of the properties. P.W.1 has totally denied all suggestions put by the counsel for the defendants in this regard. However, he has admitted that the suit properties are in possession of the defendants. In the cross examination, the counsel for the defendants has not denied the case of the plaintiff that their grand father had given the suit schedule properties to the grand father of the defendants- Kotrabasappa on lease and it is determinable if lessee becomes defaulter.

15. In Ex.P32- judgment in OS 152/2006 instituted by the defendant No.1, the defendant No.1 has not claimed ownership over the suit properties, but claimed right as permanent lessee and claimed title to the trees grown up in the suit properties. In Ex.P33- the deposition of the defendant No.1 in said suit as PW1, he has admitted that his father and grand father were the lessees and not paid rent of suit property after death of his father. This statement of the defendant No.1 clearly establishes that one of the condition of the lease has been violated by the defendants. The pleadings of the defendants in the written statement in this case is in contrast with their contention in OS 152/2006 and not given any evidence in proof of them. In this case, the defendants have not disputed the title of grand father of the plaintiff to the suit properties.

Further, in view of the recitals of Ex.P28- lease deed, it is clearly established that suit properties are the ancestral properties of the plaintiff's family. Therefore, in view of foregoing discussion and reasoning, I have answered Issue No.1 in Affirmative and Issue No.3 in Negative.

16. **Issue No.2 and 4:** The plaintiff has proved that the suit schedule properties are his joint family properties and the defendants have become the defaulter in making payment of lease, as per the lease deed dated 06.07.1925. The plaintiff has claimed that lease as per lease deed 06.07.1925 has been determined on 30.11.2017 by issuing notice dated 08.05.2017, which has been duly served upon the defendant No.2 to 4 and not claimed by the defendant No.1. PW1 has given oral evidence in this regard and produced Ex.P36 Notice dated 08.05.2017 and Ex.P37- Reply Notice dated 27.11.2017 got issued by the defendants.

17. As per Section 106(1) of the Transfer of Property Act, 1882, In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month

to month, terminable, on the part of either lessor or lessee, by fifteen days' notice. In this case as the lease was not for agriculture purpose, it may be terminated by fifteen days' notice. In this case Ex.P36- Notice dated 08.05.2017 has been served upon the defendants. From Ex.P38 to Ex.P41, it reveals that said notice has been served upon the defendants on 11.05.2017. This suit has been instituted on 03.08.2018 after determination of lease on 30.11.2017. In reply notice, the defendants have denied the rights of the plaintiff to suit properties and not denied service of notice dated 08.05.2017. In my considered view, the plaintiff has legally terminated the lease dated 06.07.1925.

18. The plaintiff has filed the suit being the manager of the Hindu joint family. From the judgment of the Hon'ble Apex Court in ***Devidas v. Shrishailappa, (1961) 3 SCR 896***, it is clear that the manager or Karta of the joint family is competent to institute such suit and it is not necessary to bring other members of the family as parties unless it would affect the rights of the defendants or the defendants raise objections in this regard at earliest point of time. Therefore, in view of foregoing discussion and reasoning, I am of the opinion that the plaintiff is entitled for the relief as sought in the plaint.

Accordingly, I have answered Issue No.2 and 4 in the Affirmative.

19. **Issue No. 5:** In view of my findings on issue no. 1 to 4, I proceed to pass the following :

ORDER

The suit of the plaintiff is decreed with costs.

The plaintiff and his joint family is the owner of the suit schedule properties.

The defendants shall hand over the possession of the suit schedule properties, within one month. Otherwise, the plaintiff shall get possession of the suit schedule properties, through the process of the Court.

Draw decree accordingly.

(Dictated to the stenographer, transcribed by her on the computer, corrected, signed and then pronounced by me in the open court on this the 16th Day of June 2022)

(Sri. Prabhakara Rao),
Senior Civil Judge & JMFC.,
Soraba.

-ANNEXURE-**I. LIST OF WITNESSES EXAMINED FOR PLAINTIFF:**

P.W.1 : Dr. A. R. Raghuveer
s/o. Ramamurthy

II. LIST OF DOCUMENTS EXHIBITED ON PLAINTIFFS SIDE:

Ex.P1 to Ex.P7 Extracts of tax demand register of the suit schedule properties.
Ex.P8 to 18 Tax paid receipts.
Ex.P19 to Ex.25 Tax paid receipts.
Ex.P26 Certified copy of the photographs.
Ex.P27 Genealogical tree of the defendants' family.
Ex.P27(a) Notice dated 06.11.2004
Ex.P28 Copy of lease deed dated 06.07.1925.
Ex.P29 Letter to the Panchayath Development Officer by the plaintiff
Ex.P30 Copy of extract of discharge certificate of Government Girls School, Anavatti.
Ex.P31 Plaint copy in O.S.152/2006
Ex.P32 & 33 Judgment and decree in O.S. 152/2006.
Ex.P34 Copy of the deposition in O.S.152/2006.
Ex.P35 Issues in O.S. 152/2006.
Ex.P36 Copy of the legal notice, dated 08.05.2017.
Ex.P37 Reply notice dated 24.11.2017.
Ex.P38 to 40 Acknowledgment
Ex.P41 Postal cover addressed to the defendant No.1
Ex.P42 Death certificate of Ramamurthy A.D.

III. LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENDANTS:-

-Nil-

IV. LIST OF DOCUMENTS MARKED ON BEHALF OF THE DEFENDANTS:

-Nil-

(Sri. Prabhakara Rao)
Senior Civil Judge & JMFC.,
Soraba.