

Form No.9 (Civil) Title sheet for Judgment in Suits (R.P.91)
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**IN THE COURT OF THE PRL.CIVIL JUDGE AND JMFC COURT,
AT CHIKKANAYAKANAHALLI.**

Dated this 21st day of June 2019.

Present : Smt.Prameela.M, *B.Com,, LL.B*,
Prl.Civil Judge and JMFC.

OS No.5/2014.

Plaintiffs:

1. Badiyanaika s/o Meghanaika,
a/a 65 years,
Resident of G.Ranganahalli village,
Kasaba hobli,
Sira taluk.
2. Narayananaika s/o Maghanaika,
a/a 60 years,
3. Chandranaika s/o Maghanaika,
a/a 55 years,
4. Nagrajanaika s/o Maghanaika,
a/a 50 years,

Plaintiffs No.2 to 4 are residents of
Ambarapura village,
Huliyar hobli,
Chikkanayakanahalli taluk,
Tumkur district.

(By Pleader **Sri.H.R.Rameshbabu**)

//versus //

Defendants:

1. Shivakumar s/o Bojanna,
a/a 52 years,
Resident of Hullaekere village,
Dandinashivara hobli,
Turuvekere taluk,
Tumkur district.
2. Lakshmeesha s/o Basavaraju,
a/a 33 years,
Resident of Sasalahalli village,
Nonavinakere hobli,
Tiptur taluk.
3. Nagaraju s/o Bandaekariyappa,
a/a 40 years,
Resident of Bellara village,
Huliyar hobli,
Chikkanayakanahalli taluk,
Tumkur district.

(By Pleader **Sri.K.N.Gururaja**)

Date of Institution of the suit	02.01.2014.						
Nature of the suit(suit on pronote, suit for Declaration and possession, suit for injunction, etc.,	Declaration and Permanent injunction.						
Date of commencement of recording of the evidence.	27.01.2016.						
Date on which the Judgment was pronounced	21.06.2019.						
Total Duration:	<table><tr><td>Year/s</td><td>Month/s</td><td>Day/s</td></tr><tr><td>05</td><td>05</td><td>19</td></tr></table>	Year/s	Month/s	Day/s	05	05	19
Year/s	Month/s	Day/s					
05	05	19					

(PRAMEELA.M)
Prl. Civil Judge & JMFC,
Chikkanayakanahalli.

J U D G M E N T

This suit filed for the relief of declaration and permanent injunction in respect to suit schedule property.

2. The substance of the pleadings as hereunder;

The land bearing sy.No.6 of Ambarapura village is totally measuring 14 acres 28 gunta. Out of 14 acre 28 gunta, a portion of 7 acre 14 gunta sold by the Sannarangappa in favour of K.V.Puttanna under the registered sale deed dated 8.4.1949. On the very same day one Hanumappa sold remaining 7 acre 14 gunta of sy.No.6 in favour of K.S.Ramachandrappa. Then the said K.S.Ramachandrappa sold 7 acre 14 gunta in favour of Hussainbiamma under the registered sale deed dated 25.6.1954. The father of plaintiff Meghanaika purchased 7 acre 14 gunta in sy.No.6 under the registered sale deed 30.8.1956 from Hussainbiamma. Then his father purchased another portion from his vendor K.V.Puttanna to an extent of 7 acre 14 gunta under the registered sale deed 30.8.1956. Therefore, his father was in possession of 14 acre 20 gunta in sy.No.6. The plaintiffs are the legal heirs of the deceased Meghanaika. After his demise they are the absolute owner of the full extent of 14 acre 28 gunta in sy.No.6.

3. It is further asserted that the sy.No.6 measuring 14 acre 28 gunta has been split into 2 phodes as sy.No.6/1 measuring 7 acre 25 gunta including kharab measuring 3 gunta and sy.No.6/2 measuring 7 acre 08 gunta including Kharab 2 gunta of Ambarapura village. Now the plaintiffs are in possession and enjoyment of the full extent of 14 acre 20 gunta. The defendant without having any right, title over the suit schedule property, he filed a petition before the Deputy Tahasildar, Huliya against the father of plaintiff Meghanaika in RRT No.7/89-90 for changing khatha of the suit schedule property in his favour by alleging that the suit schedule property belongs to one Gowramma w/o Siddaramaiah. The said petition dismissed by the Deputy Tahasildar order dated 31.8.90. Thereafter, the defendant No.1 preferred an appeal before the A.C.Tiptur by challenging the Deputy Tahasildar order. The said appeal was also dismissed by the A.C on 2.11.1992. The defendant No.1 has not challenged the order passed by the A.C.

4. The defendants fully knowing the proceedings before the A.C and Tahasildar, but he suppressed the order passed by A.C.Tiptur and concocted the revenue documents and thereby he changed the khatha of the suit schedule property in his name vide MR No.9/2008-

09. Then the defendant No.1 created and concocted the document in the style like sale deed in favour of defendant No.2. Defendant No.2 changed the khatha in his name vide MR No.5/2010-11. Then the plaintiff challenged the MR accepted by the Tahasildar before the A.C.Tiptur in RA No.135/2012-13. The same was pending before the A.C.Court. Now the defendant on the basis of concocted documents and also assistance of enimical persons they are tried to alienate the suit schedule property to defraud the valuable rights of the plaintiffs. Hence, plaintiffs constrained to file this suit.

5.This defendant No.2 filed his written statement. Defendant No.1 and 3 adopted the written statement of defendant No.1 by filing memo. The defendant denied the averments of the plaint by contending that, the suit schedule property originally belonged to Government. The said Government granted the suit schedule property in favour of one Gowramma w/o Siddaiah vide No.SDR/43/1940-41. Since the date of grant, he was in possession of the suit schedule property. It is further contended that, due to non-payment of Kandaya, the land included the suit schedule property considered as Phada land. Then the khatha has been restored in the name of Gowramma vide order MR No.14/1956-57. Then she was in

possession and enjoyment of the suit schedule property. The said Gowramma had 4 children namely Siddanna, Shivanna, Ganganna and Bojanna. Except Bojanna, other children of Gowramma died without marriage. Bojanna married Nagamma. The defendant No.1 is only one child of said couple. After demise of his father, he sold 2 acre 20 gunta out of 7 acre 25 gunta in favour of defendant No.2 under the registered sale deed dated 15.7.2010. The defendant No.2 is in possession of said purchased property by paying kandaya to the concerned authority. It is further the defendant No.2 availed loan from the State Bank of India, Huliya by mortgaging the purchased property. Hence, the plaintiff is not entitled for owner of the suit schedule property. After restoration of Phada, the suit schedule property came into original owner. Hence, there is no question of title and possession in favour of plaintiff. It is further contended that, the suit is bad for non-joinder and mis-joinder of necessary party and the suit filed by the plaintiff in the present form is not maintainable. Therefore, prayed to dismiss the suit with cost.

6. On the basis of above pleadings, the following issues are framed by this court:-

1. Whether the plaintiffs prove that they are the absolute owners of suit schedule property?

2. Whether the plaintiffs further prove that they are in actual possession and enjoyment of suit schedule property?
3. Whether the plaintiffs further prove the alleged interference by the defendants as averred in the plaint?
4. Whether the defendants prove that the suit is bad for non-joinder of necessary parties?
5. Whether the defendants further prove that suit is bad for mis-joinder of unnecessary parties to the suit?
6. Whether the defendants further prove the suit in the present form is not maintainable?
7. Whether the defendants further prove the suit is under valued?
8. What decree or order?

Addl.Issue No.1dated 29.2.2016:

1. Whether the plaintiffs are entitled for the relief as sought for?

7. In order to prove the case, plaintiff No.2 examined himself as PW1 and he exhibited 20 documents which were marked as Ex.P1 to Ex.P20 and plaintiff No.3 examined as PW4 and two witnesses examined as PW2 and PW3. On the other hand defendant led examination-in-chief as DW1, but he has not tender for cross-examination. Defendant summoned one witness from Manager of SBI., Huliya. He deposed evidence as DW2.

8. Heard arguments of counsel for the plaintiffs and defendants.

9. My answers to the above Issues are as under;

Issue No.1 : In the Affirmative.

Issue No.2 : In the Affirmative.

Issue No.3 : In the Affirmative.

Issue No.4 : In the Negative.

Issue No.5 : In the Negative.

Issue No.6 : In the Negative.

Issue No.7 : In the Negative.

Addl.Issue No.1 dated 29.2.2016 : In the negative.

Issue No.8 : As per the final order,

for the following:

REASONS

10. **Issue No.1**: In order to prove the case the plaintiff Nos.2 and 3 examined themselves as PW1 and PW4 and they have reiterated the plaint averments in their examination-in-chief affidavits. In support of his case, two witnesses examined as PW2 and PW3.

Apart from oral evidence, he produced 30 documents which were marked as Ex.P1 to Ex.P30. Ex.P1 is the Aakarbandh in respect of

suit schedule property. Ex.P2 is the LR Tippani, Ex.P3 and Ex.P4 are the certified copy of sale deeds; Ex.P5 is the RTC extract for the year 1983-84 to 1987-88. Ex.P6 and Ex.P7 are the certified copy of the order passed by the Deputy Tahasildar and Assistant Commissioner, Tiptur. Ex.P8 is the Encumbrance certificate. Ex.P9 is the certified copy of Mutation. Ex.P10 is the certified copy of sale deed dated 15.7.2010. Ex.P11 is the RTC extract for the year 2010-11, Ex.P12 is the Notice issued by the A.C.Tiptur in RA No.135/2012-13. Ex.P13 to Ex.P16 are the certified copies of sale deeds. Ex.P17 is the RTC extract for the year 2013-14. Ex.P18 is the RTC extract for the year 2013-14 in respect to sy.No.6/2p. Ex.P19 is the Notarized copy of Genealogy tree. Ex.P21 to Ex.P27 are the Photos, Ex.P28 is the CD. Ex.P29 is the original sale deed dated 30.8.1956. Ex.P30 is the certified copy of the sale deed dated 6.5.1954.

11. The defendant denied the case of the plaintiff. In support of his defense, the defendant No.2 was examined as DW1. Thereafter the DW1 has not tendered for cross-examination in spite of several opportunities granted by this court. Therefore, the evidence adduced by the DW1 could attach any evidentiary value. It is further the defendant filed application and called for records from the State Bank

of India, Huliya. The Manager of State Bank of India, Huliya present and produced documents and adduced evidence.

12. The plaintiffs are claiming relief with regard to declaration of title and permanent injunction. While considering the declaration of title, the plaintiff has to prove that they are the absolute owner of the suit schedule property through cogent evidence. Therefore, the initial burden of proof is rest upon the plaintiff as per section 101 and 103 of Indian Evidence Act.

13. It is settled position of law that in a suit for declaration of title, the onus is upon the plaintiff to prove his title. Further not only is the onus on the plaintiff, he must prove title independently. Admittedly, while proving of title, the plaintiff has to show his vendor had better title to transfer the property in their favour.

14. In order to show his title the plaintiff has specifically pleaded in the plaint as well as evidence that, sy.No.6 of Ambarapura village totally measuring 14 acre 28 gunta. Out of 14 acre 28 guntas, 7 acre 18 guntas sold by Sannarangappa in favour of K.V.Puttanna under the registered sale deed dated 8.4.1949. On the same day remaining 7

acre 14 gunta has been sold by Hanumappa in favour of K.S.Ramachandrappa. The said K.S.Ramachandrappa sold 7 acre 14 guntas in Ambarapura village of sy.No.6 in favour of Hussainbiamma under the registered sale deed dated 25.6.1954. The plaintiffs' father Meghanaika purchased said 7 acre 14 gunta from Hussainbiamma under the registered sale deed dated 30.8.1956. On the same day their father Meghanaika purchased another 7 acre 14 guntas in same sy.No.6 from K.V.Puttappa under the registered sale deed dated 30.8.1956. Then after Pakka-phode sy.No.6 measuring 14 acre 20 guntas split into two parts as sy.No.6/1 measuring 7 acre 25 guntas and sy.No.6/2 measuring 7 acre 8 gunta.

15. On careful gone through the pleadings and records, it is clear that, there is no dispute with regard to sy.No.6/2. Moreover the plaintiff is claiming only in respect to sy.No.6/1 measuring 7 acre 25 gunta. Hence, the sale deed and revenue records produced by the plaintiff in respect to sy.No.6/1, which were marked as Ex.P13, Ex.P14 and Ex.P.29 are not relevant to the present case. But it can be used only in respect to know the boundaries of the suit schedule property.

16. The specific pleading in respect to suit schedule property is that the suit schedule property purchased by one K.S.Ramachandrappa from Hanumanthappa under the registered sale deed. Then the said Ramachandrappa sold the same in favour of Hussainbiamma under the registered sale deed. Thereafter, their father purchased 7 acre 14 gunta in sy.No.6 under the registered sale deed dated 30.8.1956. Thereafter survey Number 6 split into two parts through Pakka-phode. As sy.No.6/1 measuring 7 acre 25 guntas including kharab 3 gunta, totally 7 acre 25 gunta belonged to their father Meghanaika. It is further pleaded and adduced evidence that, they are the sons of Meghanaika. After the death of Meghanaika, they are absolute owner in possession and enjoyment of the suit schedule property.

17. In order to show his title and LRs., of plaintiff having better title, he has produced certified copy of sale deed which were marked as Ex.P15, Ex.P3 and Ex.P4. On perusal of Ex.P15 there is a specific recital that one Gowramma w/o Siddaramaiah executed sale deed in favour of Hanumappa s/o Basappa measuring 07 acre 18 guntas in respect to sy.No.6 and it is also specific recital with regard to handing over the possession to Hanumappa dated 5.8.1941. The plaintiff

produced another sale deed to show that the said Hanumappa s/o Basappa sold same in favour Ramachandrappa s/o Govindappa dated 7.4.1949. On perusal of the said documents there is a specific recital with regard to alienation in favour of Ramachandrappa K.S s/o Govindappa and also handing over the possession. The plaintiff produced another sale deed which was marked as Ex.P4 dated 30.8.1956. In the said sale deed there is a specific recital wherein Ramachandrappa sold the suit schedule property in favour of Hussainbiamma. On careful perusal of those sale deeds, which were marked as Ex.P15, Ex.P3 and Ex.P30 it is clear that, the suit schedule property originally belonged to one Gowramma. The said Gowramma sold 7 acre 18 guntas in sy.No.6/1 in favour of Hanumappa. Then Hanumappa sold same property in favour of Ramachandrappa. Then Ramachandrappa sold the same in favour of Hussainbiamma under the registered sale deeds. Then father of plaintiffs Meghanaika purchased the suit schedule property under the registered sale deed dated 30.8.1956, which was marked as Ex.P4. On perusal of those sale deeds the boundary, extent is mentioned one and the same.

18. Admittedly, those Ex.P15, Ex.P3 and Ex.P30 and Ex.P4 are material documents in respect to ownership of the plaintiff's father

Meghanaika. On careful gone through the above said sale deeds there is a specific recital with regard to ownership and transfer in favour of different persons. The above sale deeds clearly disclose the title of the plaintiffs father Meghanaika. There is no ground to disbelieve the documentary evidence produced by the plaintiff.

19. In support of sale deeds the plaintiff produced the Aakarbandh and LR Tippani to show that sy.No.6 measuring 14 acre 28 guntas split into two phodes as sy.No.6/1 measuring 7 acre 25 guntas including kharab and survey number 6/2 measuring 7 acre 8 gunta. On careful perusal of the Ex.P1 and Ex.P2 there is specifically mentioned by the surveyor with regard to phode made in sy.No.6 and extent also denied by as per Pakka-phode and LT Tippani. Admittedly, in Ex.P2 name of the Gowramma mentioned with respect to sy.No.61/. But on perusal of the sale deeds produced by the plaintiff it clearly discloses that, Gowramma sold sy.No.6/1 land in favour of Hanumappa. Thereafter, by hand to hand sy.No.6/1 purchased by the plaintiff's father. Therefore, even the name of Gowramma mentioned in the LR Tippani. But there is no evidence could attach to the said documents. On careful gone through the Ex.P1 and Ex.P2 attached to the sale deeds produced by the plaintiff, it is clearly discloses that

Pakka-phode made in sy.No.6 and 6/1 measuring 7 acre 25 gunta made in sy.No.6.

20. Apart from documentary evidence the plaintiff Nos.2 and 3 Narayananaika and Chandranaika were deposed evidence in consonance with the plaint averments. The learned counsel for the defendant cross-examined PW1. In the cross-examination PW1 admitted that, suit schedule property originally belonged to Gowramma. The said land was a Government land. It is further admitted that 14 acre 28 gunta in sy.No.6 land granted in favour of Gowramma. It is further admitted that name of defendant No.2 entered into RTC extracts in the year 2010-11. But he denied that defendant No.2 is in possession of suit schedule property. The other suggestions made by the learned counsel of the defendant he denied.

21. PW4 he admitted in the cross-examination that sy.No.6 totally measuring 14 acre 28 gunta. It is further admitted that, after Pakka-phode sy.No.6 split as sy.No.6/1 and sy.No.6/2. He admitted that, he did not know when Pakka-phode made in sy.No.6. It is further he admitted that sy.No.6 measuring 14 acre 28 guntas belonged to Gowramma. It is further he specifically admitted that

Gowramma sold suit schedule property to Hanumappa. Hanumappa sold the same in favour of Ramachandrappa. The said Ramachandrappa sold the suit schedule property in favour of Hussainbiamma. Then their vendor purchased the suit schedule property from Hussainbiamma. It is further PW4 specifically deposed in respect to boundaries of the suit schedule property. The other suggestions made by the plaintiff, he denied.

22. On careful gone through the oral evidence of PW1 and PW4, it is consonance with the plaint and documentary evidence and no valid admission elucidated from the mouth of PW1 and PW4. Therefore, the oral and documentary evidence adduced by the plaintiff and defendant is clearly discloses the title of Meghanaika and in consonance with the title deeds, revenue entries made in his name.

23. The defendant specifically denied the title of the plaintiffs by contending that, land bearing sy.No.6 measuring 14 acre 28 gunta, she was the owner of above said extent under SDR No.43/1940-41. Thereafter she failed to pay the Kandaya to the concerned officials. Hence, the suit schedule property to an extent of 7 acre 25 gunta declared as phada land. Then she paid kandaya to the concerned

officials. Therefore, restored phada land in favour of Gowramma vide MR.No.14/1956-57. She was in possession and enjoyment of the suit schedule property. She has 4 children namely Siddanna, Shvianna, Ganganna and Bojanna. Out of 3 died without marriage, the plaintiff No.1 is the legal heir of Bojanna. He is only successor of the suit schedule property. Then due to family necessity he sold the suit schedule property in favour of defendant No.2 under the registered sale deed dated 15.7.2010. Since the date of purchase defendant No.2 was in possession and enjoyment of the suit schedule property by changing the revenue records in his name. The plaintiffs' have no right over the suit schedule property. To grab the land from him, he filed the present suit.

24. In order to show his defense, the defendant filed affidavit in-lieu-of-examination-in-chief. But he did not tender for cross-examination even the court granted several opportunities. Therefore, examination-in-chief evidence adduced by DW1 would not attach any evidentiary value, because he has not tendered for cross-examination. It is further the defendants have specifically contended in the written statement that, defendant No.2 availed loan from S.B.I., Huliya by mortgaging the suit schedule property. So the original sale deed

executed by defendant No.1 in favour of defendant No.2 is in the S.B.I., Huliya. In the meanwhile the defendant filed application for call for records from SBI., Huliya and also seeking permission to adduce evidence in this regard. As per the compliance of the order Manager, SBI., present and produced documents.

25. He specifically deposed in his evidence that, defendant No.2 availed loan from bank by mortgaging the sale deed in favour of bank. It is further he deposed that after verification of the records produced by the defendant No.2 sanctioned loan. Before sanctioning of loan bank obtained the legal opinion with regard to documents, which is only sanctioning of loan in favour of defendant No.2. The learned counsel for the plaintiff not cross-examined DW2.

26. On careful gone through the evidence adduced by the DW2, it is not disputed that, defendant No.1 executed the sale deed in favour of defendant No.2 under the registered sale deed dated 15.7.2010 and on the basis of sale deed khatha mutated and his name entered into RTC extracts. It is further undisputed fact that, on the basis of sale deed and revenue records, bank sanctioned loan. At this juncture, it is the question whether the defendant No.1 has better

title, possession to suit schedule property in favour of defendant No.2. Admittedly, the plaintiffs established that, he himself is having better title in respect to suit schedule property. Therefore, the onus of proof shifts to the defendants to show that, defendant No.1 having better title than plaintiffs. Admittedly, DW1 not tendered for cross-examination. Hence, the evidence adduced by the DW1 could not attach any evidentiary value. To prove his defense, the defendant has not entered into witness box. Mere on the basis of sale deed, revenue documents cannot decide title of the defendant No.2.

27. It is further important to note that, before sale of suit schedule property in favour of defendant No.2, defendant No.1 filed petition before the Deputy Tahasildar for change of khatha. The present plaintiffs filed objection and concerned Tahasildar registered the RRT dispute. After enquiry, the Deputy Tahasildar, passed order on 31.8.1940 and held that, khatha and pahani in favour of the plaintiffs. In this regard the plaintiff produced certified copy of the order which was marked as Ex.P6. Then the said defendant No.1 challenged the order passed by the Deputy Tahasildar, Huliya before the A.C.Tiptur by filing the appeal in RA No.50/1991. After enquiry, the A.C.Tiptur dismissed the appeal and upheld the order passed by

the Deputy Tahasildar. On perusal of those documents, which were marked as Ex.P5 and Ex.P6, it clearly goes to show that, defendant No.1 having knowledge about the alienation made in favour of Meghanaika. It is further in the order has specifically observed that the defendant No.1 has not placed any document to show his evidence. But the plaintiffs have produced the sale deeds to show their title. The above said observation clearly goes to show that defendant No.1 has got knowledge about the alienation made in favour of Meghanaika. He knowing the each and every aspect he transferred the suit schedule property in favour of defendant No.2. Either the defendant No.1 or defendant No.2 has not produced any documents to show better title over the suit schedule property. Hence, the sale deed made in favour of defendant No.2 it clearly goes to show that, it is a fraudulent transaction. Hence, it is further the plaintiff produced the RTC extracts for the year 2010-11 which were marked as Ex.P11. Admittedly, in the column 9 and 12 the name of defendant No.2 mentioned and khatha mutated in his name on the basis of sale deed made by the defendant No.1 in favour of defendant No.2. Any how no title passed in favour of defendant No.2 through Ex.P10 sale deed. Moreover the defendant No.2 miserably failed to prove that he is having a better title rather than the plaintiffs. In addition to that,

defendants have not attempt to adduce evidence to disprove the case of the plaintiffs. On careful gone through the records, it is clearly discloses that, the defendants have miserably failed to prove their defense by adducing evidence. By considering the oral and documentary evidence adduced and produced by the plaintiffs clearly established the title of the plaintiffs father Meghanaika. If at all the defense taken by the defendant is true, what is prevented them to adduce better evidence rather than the plaintiffs. But the defendant has not made any efforts. On careful gone through the oral and documentary evidence adduced by the plaintiff it orally discloses the title of the father of plaintiff Meghanaika. Therefore, they are entitled for declaration relief. Hence, Issue No.1 is answered in the affirmative.

28. **Issue Nos.2:** The plaintiffs have specifically pleaded in the plaint as well as evidence that, since the date of purchase their father Meghanaika was in possession and enjoyment of the suit schedule property. After the death of him, they are in possession and enjoyment of the suit schedule property as on the date of filing of the suit.

29. Admittedly, the plaintiffs establish that their father Meghanaika was the absolute owner of the suit schedule property. They are the successor of the Meghanaika and they are absolute owner of the suit schedule property. In order to prove their possession over the suit schedule property, they produced RTC extracts for the year 1983-84. Admittedly, the plaintiff has not produced revenue documents in the year 2014. But he produced photos to show that they are in possession of the suit schedule property.

30. In support of his case, plaintiff examined two independent witnesses by name Mallikarjunaiah and Ramesha. They have specifically adduced evidence that, plaintiffs are in possession of the suit schedule property. Further they produced in their evidence that, land bearing sy.No.6 of Ambarapura village, measuring 14 acre 28 guntas. The plaintiffs' father purchased the suit schedule property under the registered sale deed from Hussainbamma. Since the date of purchase the father of plaintiffs was in possession and enjoyment of the suit schedule property. After Pakka-phode the sy.No.6 split in two phodes as sy.No.6/1 measuring 7 acre 25 gunta and sy.No.6/2 measuring 7 acre 8 guntas. After the death of their father the plaintiffs are in possession and enjoyment of the suit schedule property.

31. The learned counsel for the defendant Nos.2 and 3 cross-examined the PW2 and PW3. They specifically admitted that, sy.No.6 measuring 14 acre 28 gunta belongs to Gowramma and they have specifically deposed that, Gowramma sold Hanumappa. Then Hanumappa sold Ramachandraiah. The said Ramachandraiah sold Hussainbiamma. Their father Meghanaika purchased the suit schedule property from Hussainbiamma. It is further they have deposed that the plaintiffs are in possession and enjoyment of the suit schedule property by denying all the suggestions made by the learned counsel for the defendant.

32. In support of oral evidence plaintiff produced Ex.P21 to Ex.P27 Photos. It is further he produced certified copy of the order passed by Deputy Tahasildar, A.C.Tiptur, which were marked as Ex.P6 and Ex.P7. On careful perusal of the Ex.P6 and Ex.P7 there is a specifically observation by the Deputy Tahasildar that, after enquiry and visited the spot the plaintiffs are in possession and enjoyment of the suit schedule property by planting coconut and other plants. Moreover in support of that contention it could be seen in the Ex.P20, Ex.P21 to Ex.P27 photos. By considering all the oral and documentary

evidence adduced and produced by the plaintiff it clearly established the possession of plaintiffs.

33. The defendant denied the signature of the plaintiff by contending that, plaintiffs are not possession of the suit schedule property on the basis of sale deed executed by defendant No.1 in favour of defendant No.2. He is in possession of the suit schedule property by changing the khatha and enters his name in the RTC extracts. Admittedly, the RTC extracts produced by the plaintiff for the year 2010-12 and 2013-14. In the column 9 and 10 of the RTC extract name of the defendant No.2 entered on the basis of the sale deed. On perusal of the RTC extracts, it apparent that, on the basis of sale deed khatha mutated in the name of defendant No.2. *Admittedly, as per section 133 of Karnataka Land Revenue Act, any entries made in the revenue records is genuine until contrary is proved.* In this case, the defendant No.2 produced the RTC extracts and his name entered into the RTC extracts for the year 2009-12 and 2013-14. But the plaintiff rebut the entry made in the RTC extracts by producing sale deeds and orders passed by the Deputy Tahasildar and A.C. Therefore, the entry made in favour of defendant No.2 could not attach any evidentiary value with regard to proving of possession. Moreover there is a specific

observation made in the Ex.P6 with regard to possession of the plaintiffs. The above observations and oral and documentary evidence adduced and produced by the plaintiff clearly established the possession of the plaintiff. The defendant not entered into witness box to disprove the possession of the plaintiff. Hence, Issue No.2 is answered in the affirmative.

34. **Issue No.3:** The plaintiff has specifically pleaded in the plaint as well as evidence that, on the basis of sale deed, defendant Nos.1 to 3 interfered with the peaceful possession and enjoyment over the suit schedule property and tried to dispossess them from the suit schedule property. Admittedly, the plaintiffs not produced iota of documents to show the interference. But they have specifically adduced evidence in the affidavit and also he examined two witnesses with regard to show their interference. The defendant denied the said facts. But they have contested the suit by contending that the defendant No.1 executed sale deed in favour of defendant No.2 and since the date of purchase he is in possession and enjoyment of the suit schedule property. The plaintiffs never in possession of the suit schedule property. The denial of the defendant it clearly goes to show the interference of the plaintiffs. Therefore the denial of defendant is

sufficient to hold that on the basis of sale deed they have interfered with the peaceful possession and enjoyment of the suit schedule property. Therefore, Issue No.3 is answered in the affirmative.

35. Issue No.4 & 5: Both Issues are inter-connected with each other hence, in order to avoid repetition of facts and for the sake of convenience, both Issues are taken together for consideration at one stretch.

The defendants specifically contended in the written statement that, defendant No.3 is not a necessary party in this suit and the plaintiff has not made necessary party in this suit. Hence, the suit is hit by non-joinder and mis-joinder of necessary party. The plaintiff has specifically stated in the plaint that, defendant No.1 to 3 tried to interfere with the peaceful possession and enjoyment of the suit schedule property. So defendant no.3 is a necessary party when there is a specific pleading and evidence with regard to interference of defendant No.3. Therefore, defendant No.3 is a necessary party.

36. It is further the plaintiff has specifically contended that, the suit is hit by non-joinder of necessary party. Simply the defendant has taken such contention but he has not specifically contended in the

written statement or adduced evidence who are necessary parties in this suit. Simply he has taken contention that suit is hit by non-joinder of necessary parties. In the absence of pleadings and evidence and mere mentioning that suit is hit by non-joinder of necessary party is not sufficient and holds no water. Therefore, Issue No.4 and 5 are answered in the negative.

37. **Issue No.6**: The defendant has specifically contended in the written statement that, suit is not maintainable in the present form. On perusal of the pleadings there is no explanation why the suit is not maintainable in the present form. Simply the defendant has taken contention that the plaintiff has not approached with clean hands. Hence, the plaintiff is not entitled for the relief. On careful gone through the written statement the defendants have no where mentioned in what circumstances, the suit is not maintainable in the present form. Hence, Issue No.6 is answered in the negative.

38. **Issue No.7**: The defendant has specifically contended in the written statement that, the value of the suit schedule property is more. The plaintiff under valued the suit schedule property. In this regard the defendant has not produced iota of document to show that

plaintiff valued the suit property under value. Moreover the defendant has not stepped into witness box to show that plaintiff under valued the suit property. On careful gone through the oral and documentary evidence adduced and produced by the plaintiff, there is no iota of evidence with regard to under value the suit schedule property by the plaintiff. Therefore, Issue No.7 is answered in the negative.

39. **Addl.Issue No.1:** The plaintiff established that Meghanaika, who is the father of the plaintiffs, got absolute right through registered sale deed. The plaintiffs are successors of deceased Meghanaika. Therefore, they are also the absolute owner of the suit schedule property and also plaintiffs establish that they are in possession of the suit schedule property as on the date of suit and defendants are interfered with the peaceful possession and enjoyment of the suit schedule property through cogent evidence. Therefore, Addl.Issue No.1 is answered in the affirmative.

40. **Issue No.8:** In view of the above discussion, I proceed to pass the following:-

ORDER

The suit of the plaintiffs is hereby
decreed with cost.

Declared that plaintiffs are owner of the suit schedule property.

Defendants are permanently restrained from interfering with the possession and enjoyment of the plaintiffs over the suit schedule property.

Draw decree accordingly.

(Dictated to the stenographer, transcribed and typed by him, after correction, printout taken by him, then signed and pronounced by me in the open court on this 21st **day of June 2019.**)

(Prameela.M)
Prl.Civil Judge and JMFC,
Chikkanayakanahalli.

ANNEXURE

1. Witnesses examined on behalf of the plaintiffs:

PW1 : Narayananaika.

PW2 : Mallikarjunaiah.

PW3 : Ramesha.

PW4 : Chandranaika.

2. Documents marked on behalf of the plaintiffs:

Ex.P1 : .Karnataka Revision Settlement Aakarbandh (Utharu)
with respect to suit schedule property.

- Ex.P2 : Certified copy of LR Tippani copy with respect to suit schedule property.
- Ex.P3 : Certified copy of sale deed dated 7.4.1949.
- Ex.P4 : True copy of sale deed dated 30.8.1956.
- Ex.P5 : Certified copy of RTC extract.
- Ex.P6 : Certified copy of order passed by the A.C.
- Ex.P7 : Certified copy of order passed by A.C.Tiptur in RA 50/1990-91.
- Ex.P8 : Certified copy of Encumbrance certificate.
- Ex.P9 : Certified copy of Mutation Register copy.
- Ex.P10 : Certified copy of sale deed dated 15.7.2010.
- Ex.P11 : RTC extract.
- Ex.P12 : Certified copy of Notice in RA No.135/2012-13.
- Ex.P13 : Certified copy of sale deed dated 5.9.1941.
- Ex.P14 : Certified copy of sale deed dated 7.4.1949.
- Ex.P15 : Certified copy of sale deed dated 5.9.1941.
- Ex.P16 : Certified copy of sale deed dated 30.8.1956.
- Ex.P17 & P18 : Two RTC extracts.
- Ex.P19 : Genealogy tree.
- Ex.P20 : Certificate with respect to Genealogy tree.

3. **Witnesses examined on behalf of the defendants:**

- DW1 : Lakshmeesha.
- DW2 : Bhaskara.

4. **Documents marked on behalf of the defendants:**

-Nil-

Prl.Civil Judge and JMFC,
Chikkanayakanahalli.