

KATK300012372019



Presented on : 09-07-2019
Registered on : 09-07-2019
Decided on : 06-07-2022
Duration : 2 years, 11 months, 27 days

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC., AT GUBBI.**

Dated this the 06th Day of July 2022

**Present: Undi Manjula Shivappa
B.Sc.LLM.,
Senior Civil Judge.**

R.A.65/2019

Appellant: Hanumaiah
S/o Late Doddahanumanthaiah,
Aged about 83 years,
R/o Kodinagenahally, Nittur Hobli,
Gubbi Taluk.

(Plaintiff in the Lower Court)

(By Sri. C.S.A. Advocate)

V/s

Respondents: 1. Lalithamma
W/o Late K.P. Rajanna,
Aged about 55 years,

2. K.R. Shivakumar
S/o Late K.P. Rajanna,
Aged about 45 years,



3. K.R. Veena
D/o Late K.P. Rajanna,
Aged about 30 years,

4. K.R. Vishwanatha
S/o Late K.P. Rajanna,
Aged about 31 years,

All are R/o Kodinagenahally,
Nittur Hobli, Gubbi Taluk.

(Defendants in the Lower Court)
(Sri.S.G.Advocate)

Date of institution of Appeal	09-07-2019		
Nature of Judgment or order appealed against	Judgment and Decree passed in O.S.312/2009 on 18-03-2019 by the Learned Prl.Civil Judge and JMFC., Gubbi in the suit filed for recovery of possession.		
Date on which the Judgment in the present Appeal, was pronounced	06.07.2022		
Total Duration	<u>Year/s</u> 02	<u>Month/s</u> 11	<u>Day/s</u> 27

(UNDI MANJULA SHIVAPPA)
Senior Civil Judge & JMFC.,
Gubbi.



JUDGEMENT

This appeal is preferred by the appellant/plaintiff under Order 41 Rule 1 r/w Sec.96 of C.P.C., challenging the Judgment and Decree passed in O.S.312/2009, dated 18-03-2019 by the learned Prl. Civil Judge and JMFC., Gubbi.

2. The appellant was plaintiff and respondents were defendants in the suit filed for recovery of possession or the sake of brevity and convenience, the parties are hereinafter referred to by their rankings before the trial court.

3. The brief facts of the plaintiff's case is that:

That one Late Mallegowda had three sons namely Hanumaiah, Nanjaiah and Chikkanna and they were all divided during their life time and living separately. The said Nanjaiah had a son namely Doddahanumanthaiah through



his wife Narasamma. The said Nanjaiah and his wife Narasamma are no more. The said Doddahanumanthaiah has got seven sons namely Hanumaiah (plaintiff), Nanjaiah, Mallaiah, Sanjeevaiah, Chikkahanumanthaiah, Nagarajaiah and Chandraiah and all are constituted a Hindu Undivided joint family. The said Nanjaiah who was the 2nd son of Doddahanumanthaiah died leaving behind him his wife Gangamma and two sons namely Rangegowda and Doddahanumanthaih. The said Mallaiah who was none other than the 3rd son of Doddahanumanthaiah also died leaving behind him his wife Gangamma and two sons namely Nagaraju and Earanna. The said Sanjeevaiah who was none other than the 4th son of Doddahanumanthaiah also died leaving behind him, his wife Gangamma and a son by name Vijayakumar as his legal representatives and all the above named persons are living together in a joint



family. Therefore, this suit is filed by the plaintiff for and on behalf of the entire joint family.

The suit schedule survey number 118, totally measuring 06 acres including kharab of 29 guntas situated at Kodinagenahally, Nittur Hobli, Gubbi Taluk, was originally belonged to one Kempamma W/o Doddahanumanthaiah of Kodinagenahally Village and the same was succeeded by her through succession after the death of her husband Doddahanumanthaiah. The plaintiff's family owned number of ancestral properties and they are all intensive agriculturist. Out of the income derived from the ancestral properties the father of the plaintiff Doddahanumanthaiah had purchased the entire suit schedule property in the name of said Kempamma under the registered sale deed dated 06-07-1946 and since then the father of the plaintiff Doddahanumanthaiah was in possession and enjoyment of the entire suit schedule property upto his death. After his



death the plaintiff and his above named brothers have succeeded to the suit schedule property through succession and since then the plaintiff and his above named brothers are cultivating the suit schedule property in joint, but the khatha and pahanies pertaining to the suit schedule property is still standing in the name of Doddahanumanthaiah.

It is further submitted the husband of the 1st defendant and father of the defendant No. 2 to 4 had filed a suit against the plaintiff for declaration of title and permanent injunction in respect of suit schedule property in O.S. No.22/1983 on the bases of alleged registered sale deed executed by one Siddalingappa dated 28-02-1958 and the said suit was decreed on 31-07-1991. Being aggrieved by the judgment and decree passed in O.S. No. 22/1983, the plaintiff had preferred a regular appeal in R.A. No. 59/1991 and the said Regular Appeal was partly allowed and



granted only permanent injunction in favor of 1st defendant's husband in respect of suit schedule property. In the said appeal it has been observed by the Hon'ble Appellate court that, any sale made by plaintiff's father is no way binding on the right of the plaintiff in the suit schedule property. Being aggrieved by the judgment and decree passed in R.A. No. 59/1991, the plaintiff preferred R.S.A. No. 497/2002 before the Hon'ble court of Karnataka and the same was dismissed. The defendant No. 1's husband has not preferred any appeal against the Judgment and Decree passed in R.A No. 59/1991, as such the plaintiff is entitle to recovery the possession of the suit schedule property from the defendants. On these grounds the plaintiff sought to decree the suit.

4. After issuance of summons, the defendants have appeared through their counsel and filed written statement



by denying the case of plaintiff. It is the contention of defendants that, RSA No. 497/2002 preferred by the defendant No. 1, was pleased to be dismissed as withdrawn. Hence the Dismissal of the said Appeal would not amount to dismissal on merits. Further the defendant No. 1 is not barred to claim her ownership, right over the schedule property. The husband of the defendant No.1 has referred an appeal against the Judgment and Decree passed in RA No. 59/1991 under RSA No. 507/2002 before the Hon'ble Hight Court of Karnataka but the same was dismissed for non-compliance of office objections within time. The plaintiff by suppressing all these facts, has filed a suit against the defendant No. 1's husband for permanent injunction in respect of suit schedule property under O.S. No. 284/2008 and the said suit was dismissed. It is further submitted that, the defendants are in possession and enjoyment of the schedule property since



more than 50 years without anybodies interference including this plaintiff. The suit schedule property i.e Sy.No. 118 as Kodinagenahlli Village, Nittur Hobli, Gubbi Taluk to an extent of 2-00 acres is originally belonged to one Kempamma. The said Kempamma has sold the above said property to one Doddahanumanthaiah S/o Nanjaiah under registered sale deed dated 01-07-1946. The said Doddahanumanthaiah S/o Nanjaiah has sold the suit schedule property to one Siddalingaiah S/o Rudraiah under a registered sale deed dated 28-02-1958. The katha and pahani of the suit schedule property was changed in the name of said Siddalingaiah and the said Siddalingaiah was put in possession of the suit schedule

Further it is submitted that, the said Siddalingaiah S/o Rudrappa has sold the suit schedule property in favor of Rajanna S/o Late Puttamma under registered sale deed dated 06-08-1974. The said Rajanna is none other than the



husband of 1st defendant and father of other defendants, since the day of purchase the said Rajanna and defendants are in peaceful possession and enjoyment of the suit schedule property. Till today the khata and pahani pertaining to suit schedule property is standing in the name of Rajanna's vendor i.e Siddalingaiah S/o Rudraiah and the name of Rajanna was also incorporated in the column No. 12(2) of RTC.

It is further submitted that, when the plaintiff and his brothers have interfered with the possession of the 1st defendant's husband namely Rajanna in the suit schedule property, he has filed a suit in O.S. No. 22/1983 against the plaintiff and his brothers and the said suit was decreed in favor of K.P. Rajanna. Since the plaintiff and his brothers have not challenged the alienation made by their father within 12 years from the date of execution of sale deed or within 3 years after they attained majority and



hence the suit is also barred by law of limitation. The plaintiff has filed this false suit against these defendants only to harass them. The defendants are in peaceful possession and enjoyment of the suit schedule property, as such the plaintiff is not entitled to any relief as prayed in the suit. On these grounds the defendants prayed to dismiss the present suit.

5. On the basis of the pleadings, the trial court had framed the following Issues:-

1. Whether the plaintiff proves he is entitle for recovery of possession of suit schedule property from defendants?
2. Whether plaintiff is entitled for the relief as claimed in the suit?
3. What Order or Decree ?

6. To substantiate his case, the plaintiff himself examined as P.W.1 and 8 documents have been got marked as Ex.P.1 to P.8 and closed his side evidence. On the other hand the



2nd defendant himself has examined as D.W.1 and has filed his affidavit in lieu of chief examination and 62 documents have been got marked as Ex.D.1 to Ex.D.62 and in support of their evidence 3 witnesses have been examined as DW2 to DW4 and closed their side evidence. Thereafter case was posted for arguments.

7. The trial court given the following findings on the above said Issues.

Issue No.1 : In the Negative

Issue No.2 : In the Negative

Issue No.3 : As per final order

8. After hearing the parties, the trial court has dismissed the suit of the plaintiff.

9. Being aggrieved by the said Judgment and Decree, the appellant/plaintiff preferred the present appeal on the following:



GROUND

1. The trial court did not considered and observed Ex.P.7 the copy of the judgment and decree passed in R.A.No.59/1991. In the said R.A. it is clearly observed that the husband of the defendant is not the absolute owner of the suit schedule property.
2. The trial court did not considered the fact that the judgment and decree passed in R.A.No.59/1991 which remain unchallenged by the respondents. Hence the Appellant is the absolute owner of the suit schedule property
3. The Trial Court given wrong conclusion there is a finding with respect to title of the property in favor of appellant in R.A.No.59/1991.
4. The trial court has not at all considered the alleged sale said to have been made by Doddahanumanthaiah S/o Nanjaiah in favor of Siddalingaiah on 28-02-1958 is not binding on the plaintiff, then the question of seeking the relief of declaration does not arise.
5. The trial court did not considered the sale deed Ex.P.1 and Ex.P.2 record of rights and index of land wherein it is clearly forthcoming the father of the Appellant was the owner in possession and enjoyment of the suit schedule property.



6. The trial court did not considered the certified copy of sale deed Ex.D.4 produced by the defendants wherein it is clearly forthcoming that the father of the Appellant has purchased the entire extent 05 acres 18 guntas in Sy.No.118.

10. After issuance of notice, respondents are appeared through their counsel and trial court records were secured. After receipt of the records, heard the arguments of learned counsels for both the parties.

11. The following points arise for my consideration:

1. Whether the judgment and decree passed by the trial court is perverse, illegal, capricious, erroneous, arbitrary, unjust and opposed to the law and interference of this appellate court is necessary?
2. Whether the trail court has failed to appreciate the oral and documentary evidence in a proper perspective manner?
3. What order?

12. My answers to the above points are as under:

Point No.1	:	In the Negative
Point No.2	:	In the Negative



Point No.3 : As per final order,
for the following :

REASONS

The rankings of the parties are same as that of in the trial court.

13. **POINT No.1 & 2 :-** Both these points are taken up together for common discussion to avoid repetition of facts and evidence, as they are based on same set of facts and law.

14. I have perused the case trial court records of O.S.No.312/2009 and also perused the documents produced by both the parties before the Trial Court and heard the arguments of both the counsels. It reveals that this is the appeal filed by the aggrieved plaintiff against the judgment and decree passed by the trial court in O.S.No.312/2009 of Prl. Civil judge (junior division) Gubbi.



The plaintiff filed the suit against these defendants seeking the relief of recovery of possession before trial court.

15. On the basis of pleadings of both parties the trial court framed in all 3 issues casting burden upon plaintiff. The plaintiff in order to prove these issues has examined himself as PW1 filed his affidavit in lieu of examination in chief where he reiterated the same averments of plaint. In support of his case, the plaintiff has produced in all 8 documents as Ex.P.1 to Ex.P.8. Ex.P.1 to Ex.P.3 are the certified copy of Form No.3. Ex.P.4 is the ROR in respect of land bearing Sy.No.118/3, Ex.P.5 and Ex.P.6 are the certified copy of judgment and decree passed in O.S.No.22/1983 decreed in favor of 1st defendant's husband namely K.P.Rajanna. These documents reveals that the said Rajanna husband of 1st defendant had filed a suit for declaration and permanent injunction in respect of suit schedule property and the same was decreed in his



favor. Ex.P.7 and Ex.P.8 are the certified copy of judgment and decree passed in R.A.No.59/1991 preferred by present plaintiff and his brother against the judgment and decree passed in O.S.No.22/1983. On perusal of these documents it reveals that the appeal preferred by the plaintiff was partly allowed. The prayer of declaration of title of husband of defendant No.1 was rejected and permanent injunction in respect of suit schedule property has been granted in favor of 1st defendant's husband and the judgment of the trial court partly confirmed in respect of permanent injunction only as per Ex.P.7 and Ex.P.8.

16. Now the Appellant counsel vehemently argued that the trial court has not properly appreciated these judgments Ex.P.5 to Ex.P.8 and the present appeal filed against the judgment and decree passed in O.S.No.312/2009 by the trial court where the suit



O.S.No.312/2009 filed seeking relief of recovery of possession of the suit schedule property. It is pertinent to note here that no doubt in order to seek relief of recovery of possession, the plaintiff ought to prove that he is the owner of the suit schedule property.

17. As per judgment and decree passed in O.S.No.22/1983, no doubt trial court has granted decree in respect of title of the suit schedule property in favor of husband of 1st defendant i.e. father of defendants. But the aggrieved appellant preferred an appeal before the 1st Appellate Court which is numbered as R.A.59/1991. The 1st Appellate Court set aside the judgment and decree passed in O.S.No.22/1983, partly granted the relief only in respect of permanent injunction.

18. I have meticulously perused the judgment in RA 59/1991 where appellate court in **parg 15 of judgment**



observed that “by reading WS and Additional WS it is clear that defendants have taken specific plea that alienation is not for legal necessity or benefit of that family . The observation made by the trial court that the defendants have **not taken specific plea** cannot be accepted. So finding given by the trial court that sale deed of the year 1958 binds on the defendant is not correct and it is oppose to law. Contrary Further in page 22 observed that “The defendants have not challenged the alienation made by their father. On the other hand plaintiff filed the suit for declaration and for permanent injunction. Plaintiff based his title on the sale deed EX.P2 the sale is not binding the shares of the defendants 1 to 7 whether the defendants lost their relief of claiming possession or challenging the alienation made by their father cannot be considered in this suit as **there is no plea. Incidentally without plea the court has discussed the said fact which does not**



give any right to the defendants/ appellant because the suit of plaintiff seeking relief of declaration dismissed will not considered as title of the defendant granted. Unless these defendants sought specific prayer as sale deed executed by their father not binding upon them it has to decide by competent court of law giving full opportunity to both parties to decide whether father of defendant had sold the suit property for legal necessity or not. However admittedly there is no court decree in favor of defendants accepted their title over the suit property. In RA 59/91 the court without plea of parties incidentally discussed about father of defendant without legal necessity has sold the property which is not binding upon the rights of defendants over their shares. Where there is issue on this before trial court. Hence that will not



conclusive proof of title of defendants over the suit property.

19. On the other hand, before trial court, the 2nd defendant examined as DW1 and produced in all 62 documents. The 2nd defendant has filed his affidavit in lieu of chief examination and got marked 62 documents Ex-D-1 is the certified copy of plaint in O.S.No.22/1983, Ex.D.2 is the certified copy of written statement in O.S.22/1983, Ex.D.3 is the issues in O.S.No.22/1983, Ex.D.4 is the sale deed dated 01-07-1946, Ex.D.5 is the sale deed dated 28-02-1958. Ex.D.6 is the certified copy of sale deed dated 06-08-1974 which reveals that Siddalingaiah had executed sale deed in favor of Rajanna i.e. 1st defendant's husband. Ex.D.46 is the certified copy of order sheet in O.S.284/2008. This document reveals that the present plaintiff has filed a suit against one Rajanna i.e. 1st



defendant's husband for permanent injunction in respect of suit schedule property and the same has been dismissed.

20. The defendant further examined 3 more witnesses as DW-2 to DW-4. It is the case of plaintiff that initial burden is always on the plaintiff to prove his case by adducing cogent evidence. He cannot take the advantage of the weakness of the defendants. However, the plaintiff's specific case is that, the trial court in O.S.No.22/1983 decreed the suit in respect of title over the suit schedule property. On that strength now he filed this present suit O.S.312/2009 seeking recovery of possession. In RA 59/91 Incidentally without plea the court has discussed the said fact which does not give any right to the defendants/ appellant because the suit of plaintiff seeking relief of declaration dismissed will not considered as title of the defendant granted. Without seeking relief of declaration of title, he cannot directly seek the relief of recovery of



possession. When the Appellant has no title over the suit schedule property, possession of the property cannot be handed over to him when he is not a rightful owner. Hence there is no warrant to interfere in the impugned judgment and decree passed by the trial court. Hence Points No.1 and 2 are answered in the **Negative**

21. **POINT No.3:** In view of the reasons and findings on the Points No.1 and 2, I proceed to pass the following :

ORDER

The Regular Appeal filed under Order 41 Rule 1 r/w Sec.96 of C.P.C., is hereby dismissed with cost.

Consequently the impugned Judgment and Decree passed on 18-03-2019 in O.S.312/2009 by the Learned Prl. Civil Judge and JMFC., Gubbi, is hereby confirmed.



Office to draw decree accordingly.

Transmit the lower court records along with the copy of this Judgment and decree to the trial court, forthwith.

(On my dictation transcribed, typed and printed by the Stenographer, the script is corrected, signed and then pronounced by me in the open court on this the 06th Day of July 2022.)

(UNDI MANJULA SHIVAPPA)
Senior Civil Judge & JMFC.,
Gubbi.