

**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,
GUBBI**

**Present: Smt RADHA.S, B.A., LL.M.,
Prl. Civil Judge & JMFC.,
Gubbi**

Dated this the 25th day of January 2019

O.S.No.111/2011

Plaintiff :

1. Ghouse Peer S/o Late Abdul Kareem Sab, 42 years,
2. Eqbal Ahmed S/o Late Abdul Kareem Sab, 56 years,
3. Nayaz Ahmed S/o Late Abdul Kareem Sab, 46 years,
All are R/o Lingammanahalli Village, Kadaba Hobli, Gubbi Taluk.

(By Sri. H.L.V.R., advocate)

V/s.

Defendants:

1. Modeen Sab S/o Late Kareem Sab, 63 years, **(died)**
2. Khalandar S/o Late Kareem Sab 60 years,
3. Naseer Basha S/o Khalandar Sab, 39 years,
4. Salauddin S/o Khalandar Sab, 35 years,
5. Mansoor Ilahi S/o Khalandar Sab, 19 years,
All are R/o Lingammanahalli Village, Kadaba Hobli, Gubbi Taluk.

6. H. Thimmakka D/o
Hanumantharayappa,
30 years, R/o
Mavinakommanahally
village, Anandanagara Majare,
Thyamagondlu Hobli,
Nelamangala Taluk,
Bangalore Rural District.

(By Sri. C.G.S., Advocate)

Date of filing of suit : 30.04.2011

Nature of suit : Declaration

Judgment pronounced on : 25.01.2019

Total duration : Years Months Days
07 08 25

(Smt. Radha.S)
Prl. Civil Judge & JMFC.,
Gubbi.

JUDGMENT

This is a suit filed by plaintiffs against defendants for the relief of declaration of title and permanent injunction to restrain the defendants from interfering with plaintiffs peaceful possession and enjoyment over suit schedule property.

2. The case of the plaintiffs in brief is as under:-

That the suit schedule property is originally Govt. land, the ancestors of the plaintiffs were unauthorisedly cultivating the said land for their family proposes, later they were moved an application for grant of suit schedule property in their favour accordingly the Government has granted the suit schedule property in favour of Abdul Kareem Sab, who is none other than the father of the plaintiffs,

and said Abdul Kareem Sab was in possession and enjoyment for the suit schedule property till his death.

After the death of said Abdul Kareem Sab his sons i.e., plaintiffs have succeeded to the estate of the said Abdul Kareem Sab. Since then the plaintiffs are in peaceful possession and enjoyment of the suit schedule property by cultivating the same.

The defendant No. 1 and 2 are belongs to plaintiffs Village, the father name of the defendant No 1 and 2 is Sri. Kareem Sab. By taking the undue advantage of the similarity between the names of the plaintiffs father and defendants No. 1 and 2's father, they have created G.Tree by adding the word Abdul before the father's name and on the basis of

said G.Tree defendant No. 1 and 2 have approached the revenue officials and successfully transferred the katha in respect of suit schedule property into their names. After getting the katha into their names the defendant No 1 and 2 have got partitioned in respect of suit schedule property. The defendant No. 1 and 2 have no manner of rights, title, possession over the suit schedule property. After knowing all these facts the plaintiffs without having any go they have filed present suit for above relief. On these grounds the plaintiffs sought to decree the suit.

3. After registering the suit, suit summons was issued to defendants. In pursuance of summons defendants have put their appearance before court through their counsels and filed written statement by

denying the case of plaintiff. It is the defense of the defendants that the suit schedule property measuring 4 acres of land was granted to one Abdul Kareem Sab S/o Imam Sab of Lingammanahally Village, by the Tahashildhar Gubbi under the gromo food scheme about 60 years ago and also possession was delivered to the said Abdul Kareem Sab. Since the day of allotment the said Abdul Kareem Sab was in possession of the enjoyment of the suit schedule property. The plaintiffs father name is Abdul Kareem Sab and grand father name is Fakruddin Sab and he had a brother by name Mahamed Hayath. The suit schedule property was never grated to the plaintiffs father. The defendant No. 1 and 2 are very close relative of Abdul Kareem Sab S/o Imam Sab as such, the said Abdul Kareem Sab S/o Imam Sab had

permitted the defendant No.1 and 2 to cultivate the suit schedule property about 3 decades ago and possession of the suit schedule property was also delivered in favour of the defendant No. 1 and 2, since then the defendant No. 1 and 2 were cultivating the suit schedule property as a permanent tenant under the said Abdul Kareem Sab S/o Imam Sab. Further the said Abdul Kareem Sab S/o Imam Sab had given consent to the revenue authorities to effect the katha and pahanies in the name of 1st and 2nd defendants, accordingly the katha and pahanies were effected in the names of 1st and 2nd defendants. Later on the 1st and 2nd defendants have orally divided the suit schedule property wherein 2 acres of land each has been allotted to the 1st and 2nd defendants in the said oral partition as their shares. Accordingly katha and pahanies

made in the name of 1st and 2nd defendants as per said oral partition.

Further it is the case of the defendants that, the 2nd defendant and his children have sold to the extent of 2 acres of land under registered sale deed dated 16-05-2007 to the 6th defendant and possession was also delivered to the 6th defendant on the date of execution of registered sale deed. Accordingly katha and pahanies to the extent of 2 acres has been made in the name of 6th defendant. The plaintiffs have not having any rights possession over the suit schedule property even though only to harass these defendants have filed false suit against the defendants. On these grounds prayed to dismiss the suit.

4. On the basis of above pleadings of both parties, the following issues have been framed by this court;

1. Whether the plaintiffs prove that, they are the owners of the suit schedule property by virtue of the inheritance or pavathi varasu?

2. Whether the plaintiffs further prove that, they are in lawful possession and enjoyment of the suit schedule property as on the date of the suit?

3. Whether the plaintiffs further prove that alleged interference by the defendants?

4. Whether the plaintiffs are entitled to the relief/s as prayed for?

5. What Order or Decree ?

5. To substantiate their case, the 2nd plaintiff himself examined as P.W.1 and 15 documents have been got marked as Ex.P.1 to P.15 and 3 other witnesses examined as PW2 to 4 and closed their side evidence. On the other hand

2nd defendant himself examined as D.W.1 and 24 documents have been got marked as Ex.D.1 to D.24 and the GPA holder of the 6th defendant has examined as D.W.2 and 2 documents have been got marked as Ex.D.25 and D.26 and closed their side evidence. Thereafter case was posted for arguments.

6. Heard arguments of Sri. H.L.V.R Advocate for plaintiffs, Sri CGS Advocate for the defendants, and perused the entire records.

7. My answer to 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 : In the Negative

Issue No.5 : As per final order for the Following;

::REASONS::

8. Issue No.1 to 3 : Since all these four issues are interlinked to each other as such I have taken up these issues together for common discussion to avoid repetition of facts and evidence.

9. To prove their case on preponderance of probabilities, the 2nd plaintiff adduced his evidence before the court by way of filing his examination-in-chief in the form of an affidavit as PW1, and he has reiterated the averments made in the plaint.

10. Keeping in view the rival contention of both parties now I advert to documentary evidence adduced by the plaintiffs. Ex.P.1 is the family G-Tree of the plaintiff issued by the Village Accountant, Kunnala Circle, as per the

provisions of the Karnataka Land Revenue Act and the Rules framed there under, only the Tahasildhar of Revenue can issue the survivorship certificate only on the basis of the application submitted by the applicant. Therefore I am of the considered opinion that this family pedigree at Ex-P-1 is not a relevant document to receive it in evidence and to place reliance upon this document. Ex.P.2 is the certified copy of death certificate of Abdul Kareem S/o Kareem Sab. Ex.P.3 & 4 are the RTCs pertaining to land bearing Sy.No. 252, while perusing these documents in column No. 9 of the said RTCs the name of Abdul Kareem Sab S/o Imam Sab is mentioned but as per the Ex.P.1 the father name of the Abdul Kareem Sab is mentioned as Kareem Sab. Ex.P.5 is the RTC for the year 2006-07 pertaining to land bearing Sy.No. 252, while

perusing this document in Sy.No. 252, 2 acres of land each has been standing in the names of 1st and 2nd defendants and their names are also mentioned in column No. 12(2) of the said RTC. Ex.P. 6 is the RTC for the year 2010-11 pertaining to land bearing Sy.No. 252/1, while perusing this document in Sy.No. 252/1, 2 acres of land has been standing in the name of 1st defendant and his name is also mentioned in column No. 12(2) of the said RTC. Ex.P. 7 is the RTC for the year 2010-11 pertaining to land bearing Sy.No. 252/2, while perusing this document in Sy.No. 252/2, 2 acres of land has been standing in the name of 6th defendant and her names is also mentioned in column No. 12(2) of the said RTC. Ex.P.8 is the certified copy of mutation register extract M.R.No. 32/1998-99, while perusing this document the 1st and 2nd defendants were got

mutation into their names in respect of Sy.No. 252 on the basis of panchayath parikath dated 25-06-1998 and it has been mentioned in the said document that 2 acres of land each in Sy.No.252 has been got mutated in the names of 1st and 2nd defendants. The contents of Ex.P.8 is reproduced as under:

ಕಡಬಾ ಹೋಬಳಿ ಲಿಂಗಮ್ಮನಹಳ್ಳಿ ಗ್ರಾಮದ
ವಾಸಿಗಳಾದ (1) ಮೋದೀನ್ ಸಾಬ್ (2)
ಖಲಂದರ್ ಸಾಬ್ ಬಿನ್ ಅಬ್ದುಲ್ ಕರೀಂ ಸಾಬ್
ಇವರುಗಳು ಸೇರಿ ತಾರೀಖು 25-06-1998 ರಂದು
ಮಾಡಿಕೊಂಡ ಪಂಚಾಯ್ತಿ ಪಾರೀಕತ್ತು ಪ್ರಕಾರ
ಖಾತೆ ಬದಲಾವಣೆಗೆ ಕೋರಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿದ
ಮೇರೆಗೆ

ಮೋದೀನ್ ಸಾಬ್ ಬಾಬು	252, 2.00
ಖಲಂದರ್ ಸಾಬ್	252, 2.00

Ex.P.9 is the mutation register extract M.R.No. 31/2007-2008. Ex.P.10 is the certified copy of registered sale deed executed by 2nd defendant and his sons in favour of 6th defendant, while perusing this document the

2nd defendant and his sons have sold out 2 acres of land in Sy.No. 252 to the 6th defendant which has been fallen to the 2nd defendant as per Ex.P.8. Ex.P.11 is the certified copy of voter list. Ex.P.12 is the grant list issued by the Tahashildhar, while perusing this document **the father name of Abdul Kareem Sab is mentioned as Imam Sab but as per the pleadings and G-tree i.e., Ex.P1 produced by the plaintiff the father name of the Abdul Kareem Sab is mentioned as Kareem Sab.** There is no corroboration between the pleadings and documents produced by the plaintiffs. Ex.P.13 is the certified copy of the grant certificate, while perusing this document the name of the grantee is not tangible and moreover at the time of issuance of this certificate there is no seal affixed by the granting department, hence

on the basis Ex.P.13 it is not possible for the court to come to the conclusion that the suit schedule property was allotted to said Abdul Kareem Sab S/o Kareem Sab. Ex.P.14 & 15 are the sketch maps pertaining to suit schedule property.

11. I have meticulously gone through the entire documents produced by the plaintiffs. It is pertinent to note that, the plaintiffs have seeking the relief of declaration of title over the suit schedule property, but they have not produced any title deeds to show their ownership and not produced any documents to show their possession over the suit schedule property as on the date of the suit. It is pertinent to note that, there are no documents to show that, the suit schedule property was granted to one Abdul Kareem Sab S/o Kareem

Sab. As per the Ex.P.1 the father name of the said Abdul Kareem Sab is mentioned as Kareem Sab but the same is not corroborated with Ex.P.3, Ex.P.4 and Ex.P.12.

12. In support of plaintiffs' case three witnesses by name 1. Khaleem S/o Late Khalim Sab, 2. Mohiddin S/o Late Azeez and 3. Nazeem D/o Khalandar Sab, have filed their affidavits in lieu of chief examination and examined as PW2 to 4, out of 3 witnesses the evidence adduced by PW3 has been discarded. The PW2 to 4 have deposed that, the suit schedule property was granted to one Abdul Kareem Sab and the plaintiffs are the sons of said Abdul Kareem Sab, now the plaintiffs are in possession and enjoyment over the suit schedule property, the defendants have no manner of rights, title interest over the suit

schedule property. To test the oral testimony of the PW2 and 4, the defendants counsel has cross examined the PW2 and 4 at length. In the cross examination, the PW2 has admitted that the suit schedule property was granted to one Abdul Kareem S/o Imam Sab and also deposed that the plaintiffs grand father's name is Imam Sab. The portion of cross examination of PW2 dated 09-12-2015 is reproduced as under:

1949-50 ರಲ್ಲೇ ಇಮಾಮ್
ಸಾಬ್ ಮಗ ಅಬ್ದುಲ್ ಖರೀಂ ರವರಿಗೆ
ದಾವಾ ಸ್ವತ್ತು ಮಂಜೂರಾಗಿದೆ ಎಂದರೆ
ಸರಿ. ವಾದಿಗಳ ತಾತನ ಹೆಸರು
ಇಮಾಮ್ ಸಾಬ್.

The admission given by the PW2 in his cross examination is totally contrary to Ex.P.1.

PW4 in his cross examination has shown his ignorance regarding the suit schedule property and grant of suit schedule

property in the name of Kareem Sab S/o Imam Sab. The portion of cross examination of PW4 dated 28-01-2016 is reproduced as Under:-

ದಾವಾ ಸ್ವತ್ತು ಇಮಾಮ್ ಸಾಬ್ ರವರ
ಮಗ ಖರೀಂ ಸಾಬ್ ರವರಿಗೆ ಸರ್ಕಾರದಿಂದ
50 ವರ್ಷಗಳ ಹಿಂದೆ ಮಂಜೂರಾಯಿತು
ಎಂದರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ, ದಾವಾ ಸ್ವತ್ತಿನ
ಪಹಣಿಯನ್ನು ನಾನು ಖುದ್ದಾಗಿ ನೋಡಿಲ್ಲ, 1ನೇ
ವಾದಿ ಮತ್ತು ನಾನು ಸ್ನೇಹಿತರು, ಆ ಸರ್ವೆ
ನಂಬರ್‌ನಲ್ಲಿ ಯಾರು ಯಾರಿಗೆ ಎಷ್ಟು ಜಮೀನು
ಮಂಜೂರಾಗಿದೆ ಎಂದರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ.

While going through the entire contents of affidavits filed by the PW2 and 4, the contents mentioned in the affidavits of the PW2 and 4 are totally contrary to the pleadings of the plaintiffs. It is the case of the plaintiffs that, the suit schedule property was granted to Abdul Kareem Sab S/o Kareem Sab, to prove this fact the plaintiffs have not produced any documents.

13. To disprove the case of plaintiffs and to substantiate their defense, the defendant No. 2 has examined as DW1 and produced 24 documents. The defendant No. 2 has filed his affidavit in lieu of chief examination and 24 documents are got marked as Ex-D-1 to 24 and the SPA holder of the 6th defendant namely Manohar B.N. S/o Late B.H. Narasimhaiah has examined as DW2 and produced 2 documents which are got marked as Ex-D-25 and 26. In the affidavits filed in lieu of chief examination by the DW1 and 2, they have reiterated the contents of their written statement. To test the oral testimony of the DW1 and 2, the plaintiffs counsel has cross examined at length but nothing has been elicited from the cross examination of DW1 and 2.

14. The relief of the declaration of title under section 34 of the specific relief act is a discretionary relief and even though, the party who has approached the court, he has to prove their case, it is at the discretionary of the court to declare title. While deciding the title of the party, the court shall exercise the discretion judiciously. In the case on hand, since the plaintiffs have approached the court with certain allegations in the form of pleadings and sought to pass the judgment in their favour. The burden is on the plaintiffs to prove those facts as per section 101 of the Indian Evidence Act. It is well settled preposition of law that, in order to prove a title over an immovable property, the oral evidence is insufficient it requires the title deeds in addition to the oral evidence. The plaintiffs have produced Ex-P-1 i.e., G-tree is totally contrary to Ex.P.3, Ex.P.4

and Ex.P.12. The plaintiffs have not even produced a single document to prove their possession over the suit schedule property as on the date of the suit. Under the discussion made above, I propose to answer issue No.1 to 3 in the negative.

15. Issue No.4 : Since the plaintiffs have not established their ownership and possession over suit schedule property as on the date of the suit, hence they are not entitled for the relief of declaration and permanent injunction. For the reasons discussed on issue No.1 to 3, I propose to answer issue No.4 in Negative.

16. Issue No.5 :In view of above discussion I proceed to pass the following;

ORDER

The Suit of the plaintiffs is hereby
dismissed with cost

Office to draw decree accordingly.

(Dictated to the stenographer directly on computer, corrected by me then the Stenographer has taken print out, after taking printout corrected, signed and then Judgment pronounced by me in open court on 25th day of January 2019.)

(Smt. Radha.S)
Prl. Civil Judge & JMFC.,
Gubbi.

ANNEXURE

1. Witnesses examined on behalf of plaintiffs-

P.W.1	:	Eqbal Ahmed.
P.W.2	:	Khaleem.
P.W.3	:	Mohiddin.
P.W.4	:	Nazeem.

2. Documents marked on behalf of plaintiffs-

Ex.P.1	:	Original Copy of Family G.Tree.
Ex.P.2	:	certified copy of death certificate.
Ex.P.3 & 4	:	Certified copy of RTC
Ex.P.5	:	RTC for the year 2006-07.
Ex.P.6	:	RTC for the year 2010-11.
Ex.P.7	:	RTC for the year 2010-11.
Ex.P.8	:	Certified copy of mutation register extract M.R No. 32/1998-99.
Ex.P.9	:	Certified copy of mutation register extract M.R No. 31/2007-08.

- Ex.P.10 : Certified copy of registered sale deed dated 16-05-2007.
Ex.P.11 : Certified copy of voter list.
Ex.P.12 : Certified copy of grant list issued by the Tahashildhar
Ex.P.13 : Certified copy of grant certificate.
Ex.P.14 & 15 : Certified copy of sketch maps.

3. Witnesses examined on behalf of defendants-

- Ex.D.1 : Khalandar.
Ex.D.2 : Manohar B.N.

4. Documents marked on behalf of defendants-.

- Ex.D.1 : Grant Certificate.
Ex.D.2 to 19 : 18 RTCs
Ex.D.20 : Certified copy of mutation register extract M.R No. 32/1998-99.
Ex.P.21 : Certified copy of mutation register extract M.R No. 31/2007-08.
Ex.P.22 : Certified copy of Order passed in RRT(A)(G)200/2010-11.
Ex.D.23 & 24 : Postal receipts.
Ex.P.25 : General Power of Attorney.
Ex.P.26 : Original copy of sale deed dated 16-05-2007.

(Smt. Radha.S)
Prl. Civil Judge & JMFC.,
Gubbi.