

Govt. of Karnataka
C.R.P.67
Form No.9 (Civil)
Title sheet for
Judgment in suits (R.P.91)

TITLE SHEET FOR JUDGMENTS IN SUITS

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

Dated this the 13TH day of April, 2018

PRESENT

SMT.PALLAVI.R. B.Sc.,LL.B.,
Prl. Senior Civil Judge & JMFC.,
Madhugiri.

O.S No.47/ 2017

PLAINTIFF: B.Chowdappa S/o Late Banavegowda,
Aged 62 years, Retired Employee,
Resident of Jothinagara, Sira town,
Tumakuru district.

(By Sri.G.K, Advocate)

-Vs-

DEFENDANTS : Narasamma W/o Late B.Nagaraju,
60 years, Agriculturist, resident of
Rangapura village, Dodderi hobli,
Madhugiri taluk, Tumakuru district.

(Exparte)

Date of institution of the : 07.04.2017
suit
Nature of the suit (suit on : For declaration and
pro-note, for declaration permanent injunction
& possession suit for
injunction etc.,)
Date of commencement : 10.08.2017
of recording of evidence
Date on which the : 13.04.2018
judgment was
pronounced
Total duration : Year's Month's Day's
01 00 06

**Prl. Senior Civil Judge
& JMFC, Madhugiri.**

J U D G M E N T

This is a suit filed by the plaintiff against the defendant for declaration of his title and for permanent injunction restraining the defendant or anybody claiming under her from interfering with his peaceful possession and enjoyment of the suit schedule properties.

2. The brief case of the plaintiff is that, he and husband of defendant are the own brothers and their father's name is Sri.Banavegowda. Husband of defendant is no more. Further submitted that, prior to 2012 plaintiff and husband of defendant have partitioned the suit schedule property under an oral partition. Her husband died during the year 2010 and since from the date of oral partition plaintiff is enjoying his share exclusively. Husband of defendant was also enjoying his share as an absolute owner. As there was no deed of partition, plaintiff and defendant have executed palu-patti dated 09.02.2012 as per the earlier oral partition before the witnesses. As per the said palu-patti suit schedule properties are allotted to the share of plaintiff.

3. On the basis of the said palu-patti, plaintiff has made an application to change the khatha and pahani before the revenue authorities and when he asked the defendant to put her signature on the notice, she refused. The plaintiff has improved the suit schedule property after the oral

partition by spending money and now defendant is refusing to give consent to change khatha and pahani to his name. Plaintiff has further submitted that, along with the suit schedule properties three more properties were also allotted to his share which are situated at Sira and now the defendant is trying to interfere with his peaceful possession and enjoyment of the suit schedule properties. Hence, plaintiff is constrained to file the suit.

4. In pursuance of service of summons the defendant failed to appear before the Court hence she was placed ex-parte.

5. On the basis of the plaint averments the following points that arise for my consideration are ;-

POINTS

1. Whether the plaintiff proves that he is the absolute owner and in possession of the suit schedule properties?

2. If so, whether further prove the interference by the defendant with his peaceful possession and enjoyment of the suit schedule properties?

3. What order or decree?

6. In order to prove the case, the plaintiff got examined himself as Pw.1 and got marked the documents as per Ex.P.1 to Ex.P.9 and also got examined two more witnesses as Pw.2 and Pw.3.

7. Heard the arguments of learned counsel for the plaintiff and perused the materials placed before me.

8. Learned counsel for the plaintiff has relied upon the following citations;

1. (2014)5 KAR.L.J 547 (Patel Munireddy Vs. Appaiah Reddy)

2. AIR 2004 Kar. 209 (Naganna Vs. Shivanna)

7. The findings on the above points are as follows

Point No. 1 : In the Affirmative
Point No. 2 : In the Affirmative
Point No. 3 : As per final order,
for the following

REASONS

8. POINT No.1 & 2: Both the points are taken together for discussion in order to avoid repetition of facts and evidence.

Case of the plaintiff is that, on the basis of palu-patti dated 09.02.2012 he is in possession and enjoyment of the suit schedule properties and when he applied to change the khatha in his name with the revenue authorities, defendant refused to give consent and now she is trying to interfere with his peaceful possession and enjoyment of the suit schedule properties.

9. In support of his case, he got examined himself as Pw.1 and he has reiterated the plaint averments and has relied upon several documents.

10. Ex.P.1 to P.6 are the R.T.C extracts standing in the name of husband of the defendant and plaintiff. Ex.P.1 to P.3 are the RTC extracts with respect to suit item No.1, Ex.P.4 is with respect to suit item No.2, Ex.P.5 is with respect to suit item No.3 and Ex.P.6 is with respect to suit item No.4. All these documents are standing in the name of husband of defendant and in the name of this plaintiff jointly. Ex.P.7 is the demand register extract with respect to item No.5 standing in the name of the husband of defendant. Ex.P.8 is the genealogical tree and Ex.P.9 is an unregistered partition deed effected on 09.02.2012 and said document discloses that the suit schedule properties were allotted to the share of plaintiff apart from other landed properties situated at Sira.

11. In order to prove the partition deed at Ex.P.9, plaintiff has examined the scribe of the deed as per Pw.2 and he has clearly deposed that he has typed Ex.P.9 as per the say of the plaintiff and defendant and the witness has identified his signature at Ex.P.9(h). Further he has identified the signatures of defendant as per Ex.P.9(a) and also deposed that both the plaintiff and defendant have affixed their signature in his presence. Plaintiff has also examined one of the attesting witness to the deed as Pw.3 and he has identified his signature at Ex.P.9(b) and he has clearly deposed that he is the relative of defendant and the plaintiff and as per the say of both the parties to the suit the scribe has typed Ex.P.9. Both the witnesses have deposed regarding the severance of status.

12. Case of the plaintiff is that, as per the oral partition palu-patti was effected between himself and defendant as per Ex.P.9 and it was executed in the presence of plaintiff and defendant, who is the signatory to the said

document. So, it is for the defendant to enter into the witness box and give evidence to rebut the case of the plaintiff.

13. Counsel for the plaintiff has relied upon (2015)1 KCCR 214, wherein, it is held that, "in respect of oral partition the defendants have placed satisfactory and cogent materials and proved the fact of oral partition with the help of oral and documentary evidence. The subsequent document i.e. palu-patti, in my opinion, is only in the nature of memorandum of partition, which does not require registration at all."

14. In the background of this citation, in the case on hand also, it is pleaded that after the oral partition, palu-patti at Ex.P.9 came to be effected on 09.02.2012 and the evidence of witnesses along with the documents also shows the severance of status and on going through Ex.P.1 and P.5

it is clear that the husband of defendant and the defendant herself have mortgaged the property with the bank.

15. Hence, it is clear that the plaintiff has proved that he along with the defendant have entered in to a palu-patti dated 09.02.2012 as per Ex.P.9 and suit schedule properties have been allotted to his share. It is further pleaded that having no interest or title over the suit schedule properties the defendant is illegally trying to interfere with his peaceful possession and enjoyment of the suit schedule properties. Further, though summons duly served upon the defendant she failed to appear before the Court in order to rebut the case of the plaintiff. If she has got any right over the suit schedule properties, she would have appeared before the Court in this suit to resist the case of the plaintiff. But in the instant case, defendant failed to appear and contest the suit filed by the plaintiff. In such a situation the case of the plaintiff goes unchallenged. Hence, in the circumstances of the case I answer points No.1 and 2 in the **Affirmative.**

16. POINT No.3 : For the aforesaid reasons, I pass the following;

ORDER

The suit of the plaintiff is hereby decreed with cost.

Plaintiff is declared as the absolute owner and in possession of the suit schedule properties.

Defendant or any body on her behalf are permanently restrained from interfering with the peaceful possession and enjoyment of the suit schedule properties by the plaintiff.

Draw decree accordingly.

(Dictated to the Stenographer directly on computer, typed and printout taken by her, corrected by me and then pronounced in the open court on this the 13th day of April, 2018)

(PALLAVI.R)
Prl. Senior Civil Judge &
JMFC, Madhugiri.

ANNEXURE

List of witnesses examined on behalf of plaintiff

PW.1 : B.Chowdappa.

PW.2 : M.S.Keshavamurthy.

PW.3 : S.T.Chinnakote.

List of documents marked on behalf of plaintiff

Ex.P.1 to 6 : RTC extracts.

Ex.P.7 : Demand register extract.

Ex.P.8 : Genealogical tree.

Ex.P.9 : Paluparikathu.

List of witnesses examined on behalf of defendants

-Nil-

List of documents marked on behalf of defendants

-Nil-

**Prl. Senior Civil Judge
& JMFC, Madhugiri**

