

TITLE SHEET FOR JUDGMENT
IN THE COURT OF PRL. CIVIL JUDGE & JMFC., AT
SIRA

O.S.NO. 155/2012

Dated this the 19th day of November 2014

PRESENT: Sri. Devaraju H.M. B.A., LL.B.,
Prl. Civil Judge & JMFC., Sira

PLAINTIFF: Sreeramaiah S/o. late Ramanna,
aged 55 years, R/o. Uddaramanahalli,
Gowdagere hobli, Sira taluk.

(By - Sri. B.Jayaramaiah, Advocate)

/Vs/

DEFENDANTS: 1. Nagarathnamma W/o. Chandrappa,
aged 25 years, R/o. Uddaramanahalli,
Gowdagere hobli, Sira taluk.
2. The Secretary,
Naduru Grama Panchayathi,
Gowdagere hobli, Sira taluk.

(D1- Sri.G.S.Ranganath,
D2- Sri. S.V.Manjunath, advocates)

Date of Institution of Suit : 7-4-2012

Nature of suit : Permanent
injunction

**Date of commencement
of recording of evidence :** 5-8-2013

Date on which Judgment was pronounced : 19-11-2014

Total duration : **Year/s** **Month/s**
Day/s
from the date of institution 02 07 12

(DEVARAJU H.M.)
Prl. Civil Judge & JMFC.,
Sira

J U D G M E N T

This is a suit filed by the plaintiff against the defendants for the relief of decree for Permanent Injunction restraining the defendants, their agents or anybody acting on their behalf from interfering with the plaintiff's peaceful possession and enjoyment of suit property and for costs.

2. Case of the plaintiff in brief is as under;

Naduru Mandal Panchayath formed sites in S.No.391 of Naduru village. Naduru Mandal Panchayath granted suit property in favour of father of the plaintiff and issued Hakkupathra on 15-8-1990. By virtue of Hakkupathra, 2nd defendant effected katha of suit property in the name of plaintiff's father. From the date of grant, the father of the plaintiff was in

possession and enjoyment of suit property. After his death, the plaintiff continued to be in possession and enjoyment of suit property. The defendants have no manner of right, title, interest, muchless possession over the suit property. In spite of that, the defendants are making attempt to interfere with the peaceful possession and enjoyment of suit property. With these reasons filed the suit and prays to decree the suit.

3. After service of summons, the defendants appeared through their counsels. The 1st defendant has filed written statement. The 2nd defendant has not filed written statement. The 1st defendant has denied the entire case of the plaintiff as false, frivolous and concocted. It is denied that the plaintiff is the owner in possession of suit property. It is further denied that suit property was granted in favour of plaintiff's father by Naduru Grama Panchayath. It is specific defence of the 1st defendant that suit property is granted in the name of Ramanna S/o. Kenchamarappa by Naduru Mandal Panchayath and issued Hakkupathra in his favour. The katha of suit property made out in the name of said Ramanna S/o. Kenchamarappa. He sold the suit property in favour of husband of 1st defendant through sale deed dated 30-11-2007. On the basis of said sale deed, katha of suit property changed in the name of husband of 1st defendant. The husband of 1st defendant

died and 1st defendant succeeded to the suit property and she is in possession and enjoyment of suit property. The plaintiff is not the owner in possession of the suit property. The 1st defendant is the absolute owner in possession of the suit property. With these reasons prays to dismiss the suit with costs.

4. On perusal of pleadings, the following Issues have been framed;

ISSUES

1. Whether the plaintiff proves that he is in lawful possession and enjoyment of the suit schedule property, as on the date of suit?

2. Whether the plaintiff further proves alleged interference or obstruction by the defendants?

3. Whether the plaintiff is entitled for relief as sought for?

4. What Order or Decree ?

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5. In order to substantiate the case, the plaintiff himself examined as P.W.1 and got admitted 17 documents as Ex. P1 to 17. The plaintiff also examined two witnesses namely Revanna and Sriramappa as PW-2 and 3. The plaintiff's counsel closed his side evidence.

6. On the otherhand, the defendant No.1 examined herself as DW-1. Ex.D1 got admitted through PW-1.

Ex.D2 to 11 are marked through DW-1. The defendant No.1 also examined one witness namely Shivakumar as DW-2. The 1st defendant's counsel closed her side evidence.

7. Heard the arguments of learned Counsels for both sides.

8. Perused the pleadings and materials placed on record.

9. My findings on the above issues are as under;

Issue No.1 : In **negative**

Issue No.2 : In **negative**

Issue No.3 : In **negative**

Issue No. 4 : **As per final order**
for the following;

REASONS

10. **Issue No.1:** It is the case of the plaintiff that he is the absolute owner in possession and enjoyment of the suit property. The suit property is granted in the name of his father on 15-8-1990. From the date of grant, his father was in possession and enjoyment of the suit property. After the death of his father, he continued to be in possession and enjoyment of suit property. PW-1 deposed the same fact in his chief examination affidavit.

11. The plaintiff has produced 17 documents at Ex.P1 to 17. Ex.P1 is the Hakkupathra issued in the name of Ramanna S/o. Doddaramanna in respect of suit Sy.No.37 of Naduru village. Ex.P2 to 4 are the tax paid receipts. Ex.P5 is the certified copy of tax demand register extract for the year 1994-95 standing in the name of Doddaramanna S/o Ramanna. In Ex.P5 the property number or site number is not mentioned. Ex.P6 to 15 are the tax paid receipts in the name of Doddaramanna S/o Ramanna. Ex.P16 is tax demand register extract of suit property for the year 2013-14 standing in the name of Doddaramanna S/o Ramanna. Ex.P17 is the certified copy of M.R.

12. The 1st defendant disputed the plaintiff's title as well as the possession over suit property. The 1st defendant specifically denied the plaintiff's title over suit property. It is well settled principle of law that possession follows title.

13. In a decision reported in 2008(3) KCCR 1769 S.C. (Unhtula Sudhakar -Vs- P.Buchi Reddy (dead) by L.Rs. and others), the Hon'ble Apex Court held that where there is complicated question of title relevant to the property, then proper suit would be for declaration and not for injunction simpliciter. In the case on hand the plaintiff filed suit for the relief of bare injunction. The

1st defendant has disputed the plaintiff's title and she claims that she is the owner in possession of suit property. Such being the case, there is cloud over title of the plaintiff in respect of suit property. In such circumstances, in view of the decision of the Hon'ble Apex Court referred to above, the plaintiff has to seek for declaration of title and consequential relief of permanent injunction. The plaintiff has not converted the suit for declaration of title from prayer injunction. In view of the reasons stated above, the plaintiff's title in respect of suit property is under cloud and the suit of the plaintiff only for the relief of permanent injunction is not maintainable. It is well settled principle of law that possession follows title. The title of the plaintiff is under dispute. In such circumstances, it cannot be accepted that the plaintiff is in possession and enjoyment of suit property. Accordingly, this issue is answered in the '**negative**'.

14. **Issue No.2:** It is the case of the plaintiff that the defendant is causing obstruction for the possession and enjoyment of the suit property. The plaintiff failed to prove his possession over suit property by converting the suit for declaration of title. In such circumstances, the question of interference does not arise at all. Accordingly, this issue is answered in '**negative**'.

15. **Issue No.3:** This is a suit filed for the relief of decree for permanent injunction. The plaintiff failed to prove his possession over suit property and interference by the defendants. As already held while considering issue No.1 that suit itself is not maintainable for the relief of decree for permanent injunction without seeking the relief of declaration of title. In view of the above, the plaintiff is not entitled to the relief sought for. Accordingly, this issue is answered in the '**negative**'.

16. In the case on hand, the 1st defendant produced documents at Ex.D10 which is unregistered sale deed and which is also insufficiently stamped document. On perusal of Ex.D10, it is clearly mentioned that it is a sale deed came to be executed on 30-11-2007 and consideration of the property involved in Ex.D10 is Rs.15000/-. Ex.D10 is written on 100/- rupee stamp paper. It clearly reveals that the said document is insufficiently stamped document and which is unregistered one. It is well settled principle of law that when the document which is legally in-admissible, but it is admitted in evidence, it cannot be accepted that it is become legal one. In a decision reported in AIR 1991 Orissa 166 (Naladhar Mahapatra & another -Vs- Seva Dibya & others), wherein it is held as under:

(B) Civil P.C. (1908), O.13, Rr.4, 7- Document admitted in evidence without objection- Court

can come to finding that it is legally inadmissible.

Once a document is admitted into evidence, without objection the document cannot be challenged at a subsequent stage, but in a case where a document which cannot be admitted into evidence due to some prohibition in law, even it is admitted into evidence without objection, the court can come to a finding that the document though admitted, is legally inadmissible.

In view of the decision referred to above, even though Ex.D10 is admitted in evidence, it is legally inadmissible document. Ex.D10 is a insufficient stamped document. It is bounden duty of the court to impound such document if the party who relied the said document is not paid deficit stamp duty and penalty. Therefore it is just and proper to direct the 1st defendant to pay deficit stamp duty and penalty on Ex.D10 within the period of 30 days, from the date of this judgment. In the event, the 1st defendant fails to comply the same, Ex.D10 is to be impounded to recover the deficit stamp duty and penalty in accordance with law.

17. Issue No.4: In view of my findings on Issue No.1 to 3, I proceed to pass the following;

ORDER

Suit of the plaintiff is dismissed.

The 1st defendant is directed to pay deficit stamp duty and penalty on Ex.D10 within 30 days from the date of this judgment.

In the event, the 1st defendant fails to deposit deficit stamp duty and penalty as ordered above, Ex.D10 ordered to be impounded.

Considering the facts and circumstances, the parties are directed to bear their own cost.

(Dictated to the stenographer, computerized and printout taken by him, then corrected, signed and pronounced by me in the open Court on 19-11-2014)

H.M.)
JMFC.,

(Devaraju
Prl. Civil Judge &
Sira

ANNEXURE

List of witnesses examined on behalf of the plaintiff:

P.W.1 -Sreeramaiah,
P.W.2- Revanna,
P.W.3- Sriramappa.

List of documents marked on behalf of the plaintiff:

Ex. P1 - Hakkupathra
Ex. P2 to 4- Tax paid receipts
Ex. P5- Demand register extract
Ex. P6 to 15- Tax paid receipts
Ex. P16- Demand register extract
Ex. P17- List of site allotted beneficiaries

List of witnesses examined on behalf of the defendants :

D.W.1 - Nagarathnamma
D.W-2- Shivakumar

**List of documents marked on behalf of the
defendants:**

Ex. D1- Sketch
Ex. D2- Hakkupathara
Ex. D3 to 7- tax paid receipts
Ex. D8 & 9- Katha Utharu
Ex. D10 - Sale deed dated 30-11-2007
Ex. D10(a)- Signature of PW-2
Ex. D10(b)- Signature of Sanneeraiah
Ex. D10(c & d)- Signatures of Ramanna
Ex. D10(e)- Signature of deed writer
Ex. D11- Death certificate

Prl.Civil Judge & JMFC.,

Sira.