

IN THE COURT OF ADDL. CIVIL JUDGE & JMFC., AT SIRA

Dated this the 12th day of January 2018

PRESENT: Smt. Geetha Kumbhar K.B.,
B.A.L., LL.M.,
Addl. Civil Judge & JMFC., Sirsa

O.S. NO. 100/2011

PLAINTIFFS

1. Nagamma,
W/o. late Thimmaiah,
Aged about 75 years,
 2. Girijamma,
W/o. Thimmaraypapa,
(D/o. Late Thimmaiah),
Aged about 35 years,
R/o. Bhoovanahalli village,
Kasaba Hobli,
Sira Taluk,
 3. Gangamma,
W/o. Eranna,
(D/o. Late Thimmaiah),
Aged about 30 years,
Plaintiffs No.1 and 3 are
R/o. Bandakunte village,
Gowdagere Hobli,
Sira Taluk.
- (By Sri. B. Ranganath,
Advocate)**

/Ns/

DEFENDANTS

1. Kadappa,
S/o. Siddappa,
Aged about 50 years,
2. Govindappa,

S/o. Siddappa,
Aged 46 years,

3. Siddappa,
S/o. Siddappa,
Aged 42 years,
4. Krishnappa,
S/o. Siddappa,
Aged 39 years,
5. Thimmaiah,
S/o. Siddappa,
Aged about 70 years,
All are Residents of
Bandakunte village,
Gowdagere Hobli,
Sira Taluk,
**(By Sri. B. Jayaramaiah,
Advocate for D1 to 4,
D5-Exparte)**

Date of Institution of suit	:	21.03.2011
Nature of suit	:	Declaration and Permanent Injunction
Date of commencement of Recording of evidence	:	19.07.2011
Date on which Judgment was Pronounced	:	12.01.2018
Total duration taken for Disposal of the suit	:	Day/s Month/s year/s
		21 09 06

(Geetha Kumbar K.B.,)
Addl. Civil Judge & JMFC.,

Sira

J U D G M E N T

The plaintiffs have filed the present suit against the defendants for the relief of Declaration and Permanent Injunction in respect of suit schedule property, for costs and such other reliefs.

2. Case of the plaintiffs in brief is as under:

That plaintiff No.1 is the mother of plaintiffs No.2 and 3. The Grand father of plaintiffs No.2 and 3 is one by name Thimmaiah and his wife name is Nagamma. The said Thimmaiah has got only one son by name Thimmaiah and his wife name is also Nagamma. This Nagamma is plaintiff No.1. She has got only two daughters, who are plaintiffs No.2 and 3. The suit schedule property originally belonged to the said grand father of plaintiffs No.2 and 3 and father of husband of plaintiff No.1. Now the khatha and pahani stands in the name of Nagamma W/o. Thimmaiah as per Mutation order passed in M.R. No. 5/1998-99, which is passed on the petition filed by Nagamma W/o. Thimmaiah and on the basis of report made by the concerned Village Accountant, the Revenue Inspector of Gowdagere hobli passed an order in M. R. No. 5/98-99 dated 4.08.1998. Accordingly, the khatha and pahani of suit survey continued in the name of Nagamma W/o. Thimmaiah. The plaintiffs being the legal heirs and successors of Late Thimmaiah continued to be the owners in possession and

enjoyment of the suit schedule property. The suit survey No. 60/1 totally measuring 1 acre 06 guntas + 1 acre 06 guntas which is 2 acres 12 guntas. Out of it, defendant No.1 Govindappa purchased 1 acre 06 guntas and remaining 1 acre 06 guntas left with the family of plaintiff No.1 i.e., the suit schedule property. The defendants, who are all sons of one Siddappa altogether, with an intention to knock off the suit schedule property from the hands of plaintiffs No.1 to 3, now trying to interfere with plaintiffs' lawful possession and enjoyment of the suit land by denying the title of the plaintiffs. Further averred that during the life time of husband of plaintiff No.1, used to get the assistance of defendants' family members in doing agricultural works in suit land. Taking advantage of it, they are making propaganda in the village that, the suit land belongs to them. On all among other averments, prayed to decree the suit.

3. After service of summons, defendants No.1 to 4 appeared before the court and filed their written statement. In spite of issue of summons, defendant No.5 remained absent. Hence, he placed exparte. Defendants No.1 to 4 in their written statement, denied the averments of the plaintiff and contended that the husband of plaintiff No.1 namely Thimmaiah and defendants' father Siddappa are brothers. The suit schedule property is the ancestral property belongs to Thimmaiah and Siddappa. During their life time, they got divided the suit schedule property orally. The said

Thimmaiah and Siddappa were lawful owners in peaceful possession and enjoyment of their share. After their death, plaintiffs and defendants being their LRs have been in lawful owners in possession and enjoyment of the share of their ancestors. Defendant No.2 purchased the property of Thimmaiah from the plaintiffs (half portion of the suit schedule property) for valuable consideration through Registered Sale Deed executed by the plaintiffs in favour of defendant No.2 dated 19.07.1999. On the strength of Registered Sale Deed, revenue documents changed in the name of defendant No.2. Since then, defendant No.2 and his brothers have been in lawful owners and in possession and enjoyment of half portion of the suit schedule property. This suit is filed with malafide intention. On all these grounds, prayed to dismiss the suit.

4. In view of the rival pleadings of both the parties, the following Issues have been framed;

1. Whether the plaintiffs prove that the plaintiffs are the absolute owners and in peaceful possession and enjoyment of the suit schedule property?
2. Whether the plaintiffs prove the alleged interference by the defendants with the suit schedule property?
3. Whether the plaintiffs are entitled for the relief as sought for?
4. What Order or Decree?

5. In order to prove the above issues, plaintiff No.2 examined herself as P.W.1 and examined one more witness as P.W.2 and got marked documents at Ex. P1 to P15. On the other hand, in spite of giving sufficient opportunities, defendants have not led any evidence. Hence, evidence of defendant taken as Nil.

6. Heard the arguments of learned counsel for the plaintiffs and defendants. Perused the available documents on record.

7. My findings on the above Issues are as follows;

ISSUE NO.1 : **In the Affirmative,**

ISSUE NO.2 : **In the Affirmative,**

ISSUE NO.3 : **In the Affirmative,**

ISSUE NO.4 : **As per Final Order**

For the following;

REASONS

8. **ISSUE NO.1:** It is the case of the plaintiffs are the absolute owners in possession and enjoyment of suit property. It is further case of the plaintiffs that plaintiff No.1 acquired suit property through MR No.5/98-99. PW-1 has filed her affidavit evidence and reiterated the plaint averments. One more witness is examined as PW-2 by filing affidavit evidence and deposed in consonance with PW-1. The plaintiff has produced 15 documents at Ex.P.1 to 15. Ex.P.1 is the Patta receipt book pertaining to suit property.

Ex.P.2 and 3 are the tax paid receipts. Ex .P.4 is the certified copy of the MR.05/1999-2000 pertaining to property sold by the plaintiff in suit Sy. No.60/1 for an extent of 1 acre 06 guntas in favour of one Govindappa S/o Sidappa. Ex.P.5 is the certified copy of the M.R.No. 05/1998-99 through which plaintiff No.1 got the suit property through pavati varasu. Ex.P.6 is the Genealogical tree of plaintiff's family. Ex.P.7 and 8 are the RTC extracts pertaining to suit property for the year 2010-11 standing in the name of plaintiff No.1. Ex.P.9 is the form No.4 pertaining to suit property standing in the name of plaintiff No.1. Ex.P. 10 is the RTC extract pertaining to suit property for the year 2015-16 standing in the name of plaintiff No.1. Ex.P. 11 is the RTC extract pertaining to suit property for the year 2010-11 standing in the name of plaintiff No.1. Ex.P.12 is the Genealogical tree pertaining to defendants family. Ex.P.13 is the certified copy of the sale deed dated 20.07.1999 executed by the plaintiffs in favour Govindappa S/o Sidappa. Ex.P.14 is the certified copy of the M.R. No. 14/1951-52 which shows the transaction in Sy.No.65/1 and 65/6 between Sidappa S/o Kadajja and Atti Thimma S/o Chittajja, Resident of Bandakunte village. Ex.P.15 is another certified copy of Ex.P.5, which are one and same.

9. The plaintiff also examined another witness as PW-2 . He has filed his affidavit evidence and categorically deposed in his oral testimony that being the absolute owner in possession and enjoyment of property in

Sy.No. 60/1, plaintiff No.1 along with plaintiffs No.2 and 3 has sold an extent of 1 acre 6 guntas in suit Sy No.60/1 of Bandakunte village. PW-2 Further deposed that, the plaintiffs are in possession and enjoyment of the suit property.

10. It is the specific defence of the defendants that the suit schedule property is the ancestral and joint family property originally belonged to Thimmaiah and Sidaappa. After the death of said Thimmaiah and Siddappa , their legal heirs i.e., plaintiffs and defendants being lawful owners they are in peaceful possession and enjoyment of the suit property. The defendants have admitted that an extent of 1 acre 6 guntas has been sold in favour of Govindappa i.e., defendant No.2 through a Registered sale deed dated 19.07.1999 by the plaintiffs No.1 to 3. Since from the date of sale, defendant No.2 and his brothers are in peaceful possession and enjoyment of the property. The defendants contended that the plaintiffs have sold whole property in Sy.No.60/1 and there is no remain to them in that Sy. No.60/1. In order to substantiate their defence , in spite of giving sufficient opportunities the defendants neither examined any witnesses and nor produced documentary evidence.

11. The learned counsel for the plaintiff vehemently argued that plaintiff No.1 is the absolute owner of the suit property as per MR.05/98-99 and plaintiffs No.1 to 3 are in possession and enjoyment of suit property for

more than 30 years. The katha of suit property mutated in the name of plaintiffs before concerned authority. The defendants have no manner of right or title over suit property. Such being the case, they are making attempt to interfere into the same. The defendants have not placed any materials in support of their defence. With these submissions prays to decree the suit.

12. On careful perusal of the pleadings, oral and documentary evidence placed on record, the point is to be considered whether the plaintiffs are the owners in possession of suit property. Admittedly suit property is immovable property. The title to the suit property is to be established through documentary evidence i.e. title deed. It is well settled principle of law that the declaration of title in respect of immovable property cannot be granted, based on the entries in the revenue records. As per dictum of our Hon'ble Apex Court and Hon'ble High Court, the title to the suit property is to be established only through title deeds and not through entries in the revenue records.

13. On perusal of Ex.P.5, it shows that the khata of the suit property is mutated in the name of plaintiff No.1 in the year 1998-99. Defendants No.1 to 4 in their written statement clearly admit that the plaintiffs have sold an extent of 1 acre 6 guntas in suit Sy.No.60/1 in favour of defendant No.2. This admission clearly shows that the suit schedule property is standing in

the name of the plaintiff No.1 and plaintiffs No.1 to 3 have sold an extent of 1 acre 6 guntas in suit Sy.No.60/1 in favour of defendant No.2 out of 2 acres 12 guntas. The defendants contended that the plaintiffs had only 1 acre 6 guntas in Sy.No.60/1 and they sold whole property in favour of defendant No.2. On perusal of the schedule mentioned in Ex.P.13, towards north, property of plaintiffs No.1 to 3 is situated. ExP.4,5 ,7,8,9,10,11 also clearly shows that plaintiffs no.1 to 3 are in possession and enjoyment of suit property as on the date of suit.

14. On the other hand, the defendants, to prove that the suit property is an ancestral and joint family property, have not produced any oral or documentary evidence. There is no rebuttable evidence placed by the defendants to disbelieve the title of the plaintiffs over suit property. Taking into consideration of the documents placed on record and also reasons sated above, the plaintiffs have established their title and possession over the suit property by providing cogent materials. Accordingly, this issue is answered in the '**Affirmative**'.

15. ISSUE NO.2: It is the case of the plaintiffs that the defendants are attempting to interfere into the possession and enjoyment of suit property. The defendants filed their written statement and denied the plaintiffs' possession over suit property. This specific defence of the defendants amounts to their interference into the suit property. Therefore

there is no much material is required to prove interference. Accordingly, I answered this Issue in ‘**Affirmative**’.

16. ISSUE NO.3: The plaintiffs have sought for the relief of decree for declaration of title and consequential relief of permanent injunction. The plaintiffs have proved their title and possession over suit property. The plaintiffs also proved interference over suit property by the defendants. Plaintiffs No.1 to 3 being the owners in lawful possession of suit property, their possession is to be protected. Otherwise Plaintiffs No.1 to 3 cannot enjoy the suit property. Hence the act of the defendants, be restrained by way of permanent injunction. Hence plaintiffs No.1 to 3 are entitled to the relief sought for. Accordingly, this issue is answered in the ‘**Affirmative**’.

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

ORDER

Suit of the plaintiffs is decreed with costs.

It is declared that the plaintiffs are the absolute owner of the suit schedule property.

The defendants, their family members, agents, workmen or any others on behalf of them are restrained from interfering with the plaintiffs’ peaceful possession

and enjoyment of the suit schedule property, by way of permanent injunction.

Draw decree accordingly.

(Directly dictated to the stenographer on computer, typed and printout out taken by her, then corrected and pronounced by me in the open court on **12.01.2018**)

(Geetha Kumbar K.B.)
Addl. Civil Judge & JMFC.,
Sira

ANNEXURE

List of witnesses examined on behalf of the Plaintiff:

P.W.1 : Nagamma,
P.W.2 : Narasimhamurthy,

List of documents marked on behalf of the Plaintiff:

Ex.P.1 : Patta receipt book pertaining to suit property,
Ex.P.2 & 3 : Tax paid receipts,
Ex .P.4 : Certified copy of the M.R.05/1999-2000,
Ex.P.5 : Certified copy of the M.R.No. 05/1998-99,
Ex.P.6 : Genealogical tree of plaintiff's family,
Ex.P.7 & 8 : RTC extracts pertaining to suit property for the year 2010-11,

Ex.P.9 : Form No.4 pertaining to suit property,
Ex.P. 10 : RTC extract pertaining to suit property,
Ex.P. 11 : RTC extract pertaining to suit property for the year 2010-11,
Ex.P.12 : Genealogical tree pertaining to defendants family,
Ex.P.13 : Certified copy of the sale deed dated 20.07.1999,

Ex.P.14 : Certified copy of the M.R. No. 14/1951-52,

Ex.P.15 : Another certified copy of Ex.P.5,

List of witnesses examined and documents marked on behalf of the defendants:

- NIL -

**Addl. Civil Judge & JMFC.,
Sira**