

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

O.S.NO.26/2014

Dated this the 28th day of September 2016

PRESENT: Smt. Geetha Kumbar K.B.,
Addl. Civil Judge & JMFC.,
Sira.

PLAINTIFF: Arif Basha S/o. Mohamed Hussain,
aged 35 years, R/o.Shirani Mohalla,
Sira town, Tumakuru district.

Represented by S.P.A. Holder
Ayub Khan S/o. late Eliyaz Khan,
aged 34 years, R/o. Shirani Mohalla,
Sira town, Tumakuru district.

(By Sri.MRU., Advocate)

/Vs/

DEFENDANTS: 1.Smt. Maqbool Jan
W/o. late Abdul Rasheed Sab,
aged 58 years,

2.P.Khaleel sab S/o. late P.P.Fakruddin Sab,
aged 45 years,

3.Subhan Sab S/o. late P.P.Fakruddin Sab,
aged 43 years,

4.Mohamed Fakruddin Sab
S/o. late P.P.Fakruddin Sab,
aged 40 years,

5.Maqthiyar S/o. late P.P.Fakruddin Sab,
aged 38 years,

6. Afsar Basha S/o. Sufiya bee,
aged 36 years.

All are R/at Pattanayakanahalli,
Gowdagere hobli, Sira taluk,
Tumakuru district.

(D1 to 5 – Sri. PLE.,
D6- Sri. YTR., Advocates)

Date of Institution of Suit :	9-1-2014
Nature of suit	: Declaration & Permanent injunction
Date of commencement of recording of evidence :	30-11-2015
Date on which Judgment was pronounced :	28-9-2016
Total duration from the date of Institution	: Year/s Month/s Day/s
	02 08 19

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

J U D G M E N T

The plaintiff has filed the present suit against the defendants seeking for the relief of declaration that he is the absolute owner in peaceful possession and enjoyment over suit property and permanent injunction restraining the defendants

or anybody acting on their behalf from obstructing the plaintiff's peaceful possession and enjoyment of the suit property and costs.

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

The suit schedule property bearing Sy.No.519 of Nadur village, Sira taluk, originally belongs to Smt. Sufiya bee and the plaintiff has purchased the same from said Sufiya bee and defendant No.6, who was her fostered son through registered sale deed dated 25-7-2009 accompanied by deliver of possession. Since then the plaintiff is in possession of suit property, by enjoying all the rights of ownership. After the purchase of suit property, the plaintiff had applied for change of khatha of suit property in his name. The revenue authorities have rejected his application for change of khatha on the ground that he has not produced the grant certificate, under which the suit property is granted in favour of his vendors. Hence the plaintiff has preferred an appeal before the Assistant Commissioner, Madhugiri, challenging the order passed by Tahsildar on 9-10-2009 in rejecting his application for change of khatha, which is pending for adjudication. The defendants No.1 to 5, who have absolutely no manner of any right and tile over the suit property, have managed to change the khatha of suit property in their favour colluding with the revenue officials vide M.R.No.H6/2013-14. Aggrieved by this, the plaintiff has preferred an appeal before the Assistant Commissioner,

Madhugiri, in RRT(A)-267/2013-14 and has obtained stay order, which is in force till 13-1-2014. The defendants No.1 to 5 without having any manner of right, title, interest and muchless possession over suit property, are trying to interfere with the plaintiff's peaceful possession and enjoyment over suit property, in order to deprive his right in the suit property, by colluding with the revenue officials creating some concocted documents and now they are trying to alienate the suit property. Hence the plaintiff has filed this suit against defendants No.1 to 5. The 6th defendant is perferma defendant in this case. Hence prays to decree the suit.

3. After service of summons, the defendant defendants No.1 to 6 have appeared through their respective counsels. The defendants No.1 to 5 have not filed their written statement, inspite of giving sufficient opportunity. The 6th defendant has filed his written statement by admitting all the averments of the plaint as true and correct. He has stated that after the purchase of suit property, the plaintiff had applied for change of katha of the suit property in his favour, is not within his knowledge. Hence he prays to decree the suit of the plaintiff.

3. On the basis of above pleadings, the following issues have been framed:

Issues

- 1) Whether the plaintiff proves that the plaintiff is the absolute owner and is in peaceful possession and enjoyment of suit schedule property?**

2) Whether plaintiff proves the alleged interference by the defendants with the suit schedule property?

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

4) What order or decree?

4. In order to prove the case, the P.A.Holder of the plaintiff himself examined as PW-1 and got marked 8 documents as Ex.P1 to P8. The plaintiff also examined two witnesses as PW-2 and 3. As the defendants have not cross-examined PW-1 to 3, the cross-examination is taken as nil

5. Heard the arguments of counsel for the plaintiff and defendants.

6. I have perused the pleadings, oral and documentary evidence placed on record.

7. My findings for the above issues are as under;

Issue No.1: In affirmative

Issue No.2 : In affirmative

Issue No.3: In affirmative

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

REASONS

8. **Issue No.1** : It is the case of the plaintiff for declaration and permanent injunction in respect of the suit schedule property.

9. The plaintiff has purchased the suit schedule property from one Smt. Sufiya Bee and her foster son, who got the schedule property through grant certificate by Government under Bagar Hukum for consideration of Rs.1218=00 on 05-12-1996. To prove that, he has produced the certified copy of the grant certificate as Ex.P7. Ex.P8 and Ex.P5 are the two R.T.C extracts in which the name of the Smt. Sufiya Bee is written /printed in Col.No.9 as owner of the property, and in Col.No.10 it was stated that possession got through LNDRUCGCR-161/91-92 darakhastu with conditions not to alienate the property up to 15 years from the date of grant. Ex.P8 is the hand written R.T.C for the 1997-2000 and Ex.P5 is computerized R.T.C for the 2012-13 which shows Smt. Sufiya Bee was the owner of the suit schedule property. Ex.P2 is the registered sale deed dated 25-07-2009 through which the plaintiff got right, title and possession over the schedule property for consideration of Rs.2,00,000/-. On the same day Smt. Sufiya Bee and her foster son delivered the possession of the schedule property to the plaintiff. P.W.1 who has signed the Ex.P2 as 2nd witness reiterated the plaint averments. P.W.1 is non-other than Special power of attorney of the plaintiff. P.W.2 also supported the

case of the plaintiff that he knows facts of the case as he has the signed as 1st witness to the sale agreement i.e., Ex.P2. P.W.3 deposed that he was present at time of writing the agreement that is how he know the facts of the case .

10. Ex.P.3 establishes the pleading of the plaintiff that , on the strength of the sale deed the plaintiff got mutated the schedule property through M.R.25/2009-10. There is no ground to disbelieve the oral and documentary evidence provided by the plaintiff. These documents clearly establishes that the plaintiff is in possession and enjoyment of suit property, as on the date of suit. After service of Summons the defendant No.1 to 5 appeared before Court, but did not file their written statement. The defendant No.6 appeared before Court and filed his statement and admitted all the plaint averments. And he also prays that the Hon'ble court may be pleased to decree the infavor of the plaintiff. Hence, the case of the plaintiff, oral and documentary evidence referred to above remained unchallenged. There is no ground to disbelieve the plaintiff's case as well as oral and documentary evidence placed on record. In view of the reasons stated above, the plaintiff has proved that she is in lawful possession and enjoyment of suit property. Accordingly, I answer this issue in 'Affirmative'.

11.Issue No.2:- Ex.P3 Mutation register clearly establishes that in 2009, the suit schedule property was mutated in the

name of the plaintiff under M.R.25/2009-2010. Then once again the schedule property was mutated into joint names of the defendants in the year 2013 under M.R. H6/2013-14 from the same Smt. Sufiya Bee. Being aggrieved the plaintiff preferred an appeal before the Assistant Commissioner in RRT (A) No.267/2013-14. In the evidence of PW-1, he also states about interference caused by the defendant. After service of summons, the defendant no.1 to 5 has appeared before the court and did not file their written Statement. The act of the defendants itself leads to presume that they are trying to interfere with the possession of plaintiff over suit property. Hence it is necessary to restrain the illegal act of the defendant, otherwise the right of the plaintiff over suit property will be affected. Hence the plaintiff has proved interference caused by the defendants, by producing oral and documentary evidence. Accordingly, I answer this issue in 'Affirmative'.

12. **Issue No.3:-** As I have answered point No.1 and 2 in the affirmative, Ex.P2 to P8 clearly goes to show that the plaintiff is the absolute owner of the suit property and there was illegal interference and obstruction caused by the defendants. Hence the plaintiff is entitled for the relief of declaration and permanent injunction. Accordingly, I answer this issue in 'Affirmative'.

13. **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 decreed.

It is declared that the plaintiff is the absolute owner of suit property.

Further the defendants or any body acting on their behalf are permanently restrained from causing interference with the possession and enjoyment of plaintiff over the suit property.

Parties to bear their own costs.

Draw decree accordingly.

(Dictated to the stenographer on computer, printout taken by him, then corrected, signed and pronounced by me in the open Court on 28.9.2016)

Sd/-

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

ANNEXURE

List of witnesses examined on behalf of the plaintiff:

P.W.1 – Ayub Khan

P.W.2 - S.Althaf

P.W.3- Mukthar Ahamed

List of documents marked on behalf of the plaintiff:

Ex. P1 – Special power of attorney

Ex.P2 - Registered sale deed

Ex. P3 & 4- M.R. extracts

Ex. P5 & 6- RTC extracts

Ex. P7- Grant certificate

Ex. P8- RTC

List of witnesses examined and documents marked on behalf of the defendant : NIL

Sd/-
Addl. Civil Judge & JMFC.,
Sira