

KAUK310032622021



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE
AND JMFC, BHATKAL.**

Dated this the 4th Day of October, 2023

PRESENT

Sri.VINOD BALNAIK, B.A. LL.B.(Spl.),

**Principal Civil Judge and
JMFC, Bhatkal.**

O.S.111/2021

Plaintiff :

1. Timmanna @ Vittal S/o Jatta Naik
Aged about 53 years,
R/o : Ugranimane, K.B.Road cross,
Main Road, Bhatkal Taluk .

(By Sri. J.D.B., Advocate)

V/s

Defendants :

1. Smt. Manjamma W/o Goidappa Naik
A/a: 77 years,
2. Ananth S/o Goidappa Naik
A/a: 48 years,
3. Suresh S/o Goidappa Naik
A/a: 42 years,

4. Nagesh S/o Goidappa Naik
A/a: 41 years,
Defendants No.1 to 4 are
R/o : Ugranimane,
Sarpanakatte, Yalwadikavoor,
Hadeen village, Bhatkal Taluk.
5. Smt. Kamala W/o Manjunath Naik,
A/a: 53 years,
R/o: Hanuman Nagar, Bhatkal Taluk.
6. Smt. Laxmi W/o Rama Naik
A/a: 50 years,
R/o: Talan village, Bhatkal Taluk.
7. Smt. Laxmi W/o Mastappa Naik,
A/a: 63 years,
8. Mahesh S/o Mastappa Naik,
A/a: 36 years,
9. Ambika W/o Maruti Naik,
A/a: 34 years,
10. Maruti S/o Mastappa Naik,
A/a: 30 years,
11. Subray S/o Mastappa Naik,
A/a: 34 years,
12. Honnamma D/o Ira Naik,
A/a: 46 years,
13. Manjunath S/o Krishnappa Naik,
A/a: 46 years,
14. Parvati W/o Manjunath Naik,
A/a: 41 years,
15. Laxmi W/o Jattappa Naik,
A/a: 58 years,

16. Venkatesh S/o Jattappa Naik,
A/a: 43 years,
17. Chandru S/o Jattappa Naik,
A/a: 41 years,
18. Ganesh S/o Jattappa Naik,
A/a: 35 years,

Sl.No.7 to 18 are R/o: Ugranimane,
Sarpanakatte, Yalwadikavoor,
Hadeen village, Bhatkal Taluk.

19. Jayashree W/o Manjunath Naik,
A/a: 35 years,
R/o: Doddadevayyanamane,
Mundalli, Bhatkal Taluk.
20. Lachmayya S/o Ira Naik,
A/a: 58 years,
R/o: Gorte village, Bhatkal Taluk.

***(Defendants No.1 to 5, 7 to 11, 13, 15,
17 and 20 by Sri. M.G., Advocate.
Defendants No.6, 12, 14, 16 and 18 are
Exparte.)***

ORDER ON PRELIMINARY ISSUE

The plaintiff has filed this suit for recovery of possession of 'A' schedule property and mesne profit at the rate of Rs.2,000/- per month for illegal use and occupation of 'A' schedule property by the defendants and cost and such other reliefs etc.,

2. In brief, the case of the plaintiff is as follows:

The plaintiff is the absolute owner of the 'A' schedule property which is originally belonged to his uncle by name Rama Govind Naik, same is granted to him permanently by the Government by virtue of order of the Deputy Commissioner, Uttara Kannada on 04-07-1994. Form No.5 has been issued in his name by Tahasildar Bhatkal. Original Survey number of the 'A' schedule property was 80A. The new survey number is 80A4 measuring 00-10-00 (A.G.A.). The said Rama Govind Naik had no issue. He was looking after by the plaintiff. He bequeathed 'A' schedule property in favour of plaintiff on 16-04-1999. He died on 14-06-2000 leaving behind the plaintiff. The plaintiff got mutated his name in the RTC of 'A' schedule property by virtue of M.E.No.3134. The brother's wife of Late. Rama Govind Naik, Durgamma W/o Manjappa Naik had filed O.S.No.70/2013 before Additional Civil Judge Court, Bhatkal against the plaintiff and Rama Govind Naik and his family members to set aside the Will and partition of 'A' schedule property and other family properties. Same was compromised and compromise decree passed on 15-04-2021. 'A' schedule property was allotted to the share of plaintiff in the said compromise decree. The defendants are the strangers of 'A' schedule property,

they are claiming to be the owners of Sy.No.105, which is situated near 'A' schedule property. The plaintiff has not visited the 'A' schedule property till June-2016. When he visited the suit schedule property in the month of February-2017 by noticing the acquisition of 'A' schedule property by the NH-66, he came to know that, the defendants have illegally and high handedly encroached the 'A' schedule property and made an illegal buildings therein in a brisk manner. He objected for the same. The defendants misrepresented him as they have constructed the construction in their property not in his property and convinced that, if the surveyor identifies the encroachment of 'A' schedule property, they would remove the structure built by them and clear the encroachment and settle the matter. After notification of acquisition 00-03-00 (A.G.A.) in the Eastern portion of 'A' schedule property the NH-66 authority got measured and identified the portion of the land to be acquired in the 'A' schedule property and after verifying the documents the authority has paid compensation to the plaintiff to the extent of 303 square meter. The RTC of the entire 00-10-00 (A.G.A.) land in Sy.No.80A4 is standing in the name of plaintiff. The defendants have filed objection before the Land Acquisition Authority and Land Acquisition Authority has rejected their

objection. The defendants have illegally constructed the buildings by neglecting the rules and regulations, they have failed to vacate the 'A' schedule property. Hence he constrained to file this suit.

3. On issuance of suit summons to the defendants, the defendants No.1 to 5, 7 to 11, 13, 15, 17 and 20 appeared through their counsel among whom the defendant No.11 filed the written statement and rest of the defendants are adopted the same. Further the defendant No.6, 12, 14, 16 and 18 are placed exparte. The defendant No.11 in his written statement denied the plaint averments and contended that, there are 6 houses and 8 shops are situated at as per description of the schedule property. The value of the house and shops is more than one Crore. The value exceeds one Crore which is beyond the pecuniary jurisdiction of this court. Hence this Court has no pecuniary jurisdiction to try this suit.

4. On the basis of the above said pleadings, the following issues are framed.

ISSUES

1. Whether the Plaintiff proves that, he is the absolute owner of the 'A' schedule property by virtue of Will dated: 16-04-1999 and compromise decree passed in O.S.No.70/2013?

2. Whether the plaintiff proves that, the defendants have illegally constructed buildings by encroaching 'A' schedule property by dispossessing him?
3. Whether the plaintiff is entitled for mesne profits?
4. Whether the defendant No.11 proves that, the Judgment and Decree passed in O.S.No.70/2013 is not binding upon them?
5. Whether the defendant No.11 proves that, this Court has no pecuniary jurisdiction to try and entertain the suit?
6. Whether the plaintiff is entitled for the reliefs as sought for in the suit?
7. What Order or Decree?

5. In this case, the Issue No.5 is treated as preliminary issue. Heard both side on Issue No.5 and Perused the valuation slip, documents produced by the defendant and perused the citations perused by the counsel for the plaintiff which are: **AIR 1957 All 337 decided in the matter of Abdul Ghani V/s Vishunath and AIR 1954 All 188 decided in the matter of Mt. Kulsumunn-Isan V/s Khushnudi Begum and another.** Accordingly I proceed to pass the following order.

6. My answer to the above said Issue No.5 is as here under:

**Issue No.5 : In the Negative,
For the following,
REASONS**

7. **Issue No.5** : The plaintiff has filed this suit for recovery of possession and for mesne profit. On the other hand the defendant No.11 filed his detailed written statement. Based on the pleadings this Court has framed Issues. The Issue No.5 is treated as preliminary issue.

8. The contention of the defendant No.11 is that, this Court has no pecuniary jurisdiction to try and entertain the suit in support of which he produced the document i.e., valuation certificate issued by Sub-Registrar Bhatkal wherein the valuation of the properties shown with respect to lands which are adjacent to NH-66 and the lands which are away from the NH-66. The value of the landed property which is adjacent to NH-66 are : Rs.7,60,000/- per acre for dry and wet land and Rs.7,50,000/- for Bhagayath land. And the valuation of the properties which are away from the NH-66 are : Rs.2,97,000/- per acre for dry land, Rs.3,96,000/- per acre for wet land and Rs.6,60,000/- for Bhagayath land and Rs.800/- per square meter to approved residential lay out from

competent/ approving authorities and local bodies. Based on the said valuation chart the defendant contents that the valuation of the suit schedule land and the house and shop situated therein are beyond the pecuniary jurisdiction of this Court.

9. But after careful perusal of valuation slip filed by the plaintiff, the plaintiff has paid the Court fee as per Sec.29 of Karnataka Court Fees and Suit Valuation Act on the basis of subject matter, which is proper. For this, this Court has relied upon the decision reported in **(2009) 15 SCC 693** decided in the matter of **Biswanath Agarwalla V/s Sabitri Bera** wherein the Apex Court while dealing with computation of Court fees under Court Fees Act, 1970 held that *for recovery of possession, Court fees to be paid according to subject matter of the suit.*

Such being so the decision No.2 relied by the plaintiff is aptly applicable to the case on hand i.e., **AIR 1954 All 188 decided in the matter of Mt. Kulsumunn-Isan V/s Khushnudi Begum and another**, wherein it is held that:

“The plaintiff need not pay on the value of the buildings raised by the defendant. This is not a proper factor in the estimate of the plaintiff’s reliefs. He must pay on the title he asserts the thing he wants to recover, or the equities he has to vindicate,

not on any considerations of what cost or charges or loss his success in his suit may entail on the defendant”.

Hence the defendants cannot insist the plaintiff to pay the Court fee on market value of the suit schedule property and buildings and shops situated therein. Further the contentions raised by the defendant No.11 in the written statement with respect to plaintiff cannot file the suit for recovery of possession without seeking declaratory relief and contention in respect of Will, wrong description of boundaries and the sketch issued by the competent authority is different than the sketch which is mention in the alleged Form No.5 will be looked after full fledged trial. Hence for the reasons and decision discussed supra this court has got pecuniary jurisdiction to try and entertain the suit and the court fee paid by the plaintiff U/Sec.29 of Karnataka Court Fees and Suit Valuation Act is just and proper. Hence the Issue No.5 treated as preliminary issue is answered in the **Negative**. Hence, I am of the opinion that, this court has pecuniary jurisdiction as per law to try and entertain this suit. Hence, I proceed to pass the following:

ORDER

**The Preliminary Issue i.e., Issue
No.5 is answered in the Negative.**

(Dictated to the Stenographer directly on the computer,
typed by him, corrected and then pronounced by me in open
court on this the **4th day of October, 2023.**)

Sd/-
(VINOD BALNAIK)
Prl. Civil Judge and
JMFC, Bhatkal.