

Form No. 9 (Civil)  
Title sheet for  
Judgement in suits

TITLE SHEET FOR JUDGEMENT IN SUITS

IN THE COURT OF THE CIVIL JUDGE & JMFC,  
HALIYAL.

PRESENT: SRI. B.C. CHANDRASHEKAR, **B.A., LL.B.**,  
Civil Judge & JMFC, Haliyal.

**ORIGINAL SUIT NO. 34/2009**

**DATED THIS THE 19<sup>TH</sup> DAY OF DECEMBER 2014**

**PLAINTIFF/S** : Sri. Maruti S/o. Yellappa Shinde,  
Age: 60 years, Occ: Agriculture and  
Business,  
R/o. Guttigeri Galli, Haliyal,  
Tq: Haliyal (U.K.)

(By Sri. B.N. Pattekar, Advocate)

-Vs-

**DEFENDANT/S** : Sri. Shrikant S/o. Laxman Ghotnekar,  
Age: 55 years, Occ: Business  
R/o. Guttigeri Galli, Haliyal,  
Tq: Haliyal (U.K.)

(By Sri. A.M. Patil, Advocate)

Date of institution of the suit	05-03-2009		
Nature of the suit	Suit for Declaration.		
Date of commencement of recording of evidence	23-11-2011		
Date on which the Judgment was pronounced	19-12-2014		
Total duration	Year	Months	Days
	05	09	14

(CHANDRASHEKAR. B.C.)  
Civil Judge & JMFC,  
Haliyal.

### **JUDGMENT**

The plaintiff has filed this suit for Declaration to declare that he is an absolute owner and in possession over the suit property.

2. Brief facts of the plaintiff case are that, the suit schedule property is a car shed measuring 5.72 x 2.90 sq. meter out of 103.12 sq. meter in City Survey No. 252/1. Originally it belongs to one Dundaiah. G. Parishawad, wherein the house property is situated there in bearing No. 164 old No. 93/C, during his lifetime he has stood as a guarantor to loan availed by Oleveppa Channabasappa Bholashetty. Since he failed to repay the loan amount to KSFC authorities, they have put the said entire property into public auction on 09-07-2007. The plaintiff has purchased the said property in a

public auction under the registered sale deed. Thus he became the owner of entire property.

3. The plaintiff further averred that after death of Dundaiah G.Parishawad, his wife Smt. Shantadevi Parishawad has given the suit premises shed to the defendant about 4 years ago for car stand on rent basis. Since the plaintiff became the owner of the entire property, he wanted to construct the house therein and requested the defendant to vacate the same and hand over the possession. Ultimately plaintiff has caused the legal notice to the defendant on 18-11-2008 to terminate the tenancy and for possession. But the defendant intentionally refused to take the notice. Ultimately the defendant refused to hand over the possession of the suit premises. Hence with no option plaintiff has filed the suit for declaration of his ownership and possession of the suit property.

4. In response of the suit summons issued by this court the defendant has appeared through his counsel, and filed his written statement. The defendant admits that one Dundaiah parishawad was the owner of the property and suit property is the part and parcel of property bearing City Survey No. 252/1. This defendant further admits that the house measuring 103.12 sq. meter is situated in City Survey No. 252/1 and house bearing No. 164 as true and correct. Further the loan availed by the Oleveppa Channabasappa Bholashetty from KSFC and he became a defaulter as well as the authority

have put the same into the public auction is also true and correct. But the plaintiff became the owner of the entire property under the sale transaction in public auction is denied as false. The suit property of the car shed in City Survey No. 252/1 is having Municipal No. C/360(1). The KSFC authority while attaching the properties of Dundaiah, they have also attach the suit property and obtained the documents in their names. The KSFC authorities have put the property of Dundaiah bearing City Survey No. 252/1 and house in it bearing No. 164 into public auction. Since the suit property is in a possession of the defendant, the plaintiff has left the same and purchased the remaining property only. In view of clearance of loan to KSFC authorities once again Dundaiah became the owner of the suit property.

5. This defendant further denied that after death of Dundaiah his wife has given the suit property to the defendant on monthly rent basis has denied as false. The plaintiff has no interest over the suit property and other plaintiff averments as denied as false.

6. This defendant specifically contended that the house situated towards western side of the property has been purchased by the defendant from his brother Ashok Laxamn Ghotnekar. Since the said house was old one he has demolishes the same and constructed a new house. The defendant has purchased the car in 1992, as there was a vacant space the defendant used to park the car in the said

vacant space within the knowledge of the public and its owner. Neither original owner of Dundaiyah nor legal heirs nor the public have raised any objections. Since 1992 the defendant has been enjoying the suit property he became the absolute owner of the same by way of adverse possession. Plaintiff has purchased the house and vacant space in City Survey No. 252/1 by leaving the suit property. Since the K.S.F.C., authorities have attached the said property they were become the owners but not the plaintiff. There is no relationship of landlord and tenant. Since the defendant became the owner and possessor of the suit, plaintiff is not entitled any relief, hence prayed to dismiss the suit.

7. Based on the above pleadings of the parties the predecessor of this office has framed the following issues:

1. Whether the plaintiff proves that, he is the absolute owner of the suit property?
2. Whether the defendant proves that, he is the owner of the suit property by way of adverse possession?
3. Whether the defendant proves that, he is not a tenant under the plaintiff ?
4. To what reliefs the parties are entitled to?
5. What order or decree ?

**ADDITIONAL ISSUE**

1. Whether the defendant proves that, the suit is not maintainable for non joinder of necessary party ?

8. In order to prove the above issues the plaintiff himself has examined as PW-1 and 21 documents are produced and marked as Ex.P. 1 to 21. On the other hand the power of attorney holder of the defendant has examined as D.W. 1 and 7 documents are produced and marked as Ex.D. 1 to Ex.D.7 and closed their side.

9. Heard the arguments of both parties.

10. My answer to the issues as here under.

Issue No. 1	:	In the "Affirmative"
Issue No. 2	:	In the "Negative"
Issue No. 3	:	In the "Affirmative"
Issue No. 4	:	In the "Affirmative"
Addl. Issue No. 1	:	In the "Negative"
Issue No. 5	:	As per final order.

**REASONS**

11. **Issue No. 1:** The suit property is a car shed situated in City survey No. 252/1 out of 103.12 Sq. meter, which is purchased by the plaintiff under public auction. Though the plaintiff has purchased property including the suit property and became the owner, defendant is not ready to leave the suit property, but this fact has disputed by the other side.

According to the defendant, plaintiff has not purchased the suit property in a public auction, but he has purchased the said property by leaving the suit property. Under such circumstances the plaintiff has to establish that the sale transaction is not only with respect to 103.12 Sq.meter but it also includes the suit property of the car shed.

12. In order to prove the said fact in issue the plaintiff himself has examined as P.W. 1 and reiterates the plaint averments in his affidavit. Apart from the oral evidence Ex.P. 1 is the original sale certificate executed by the Spl. Thashildar, Hubli Zone, Rayapura, Dharwad, which disclosing that the plaintiff is a successful bidder and purchaser of the property bearing City Survey No. 252/1 measuring 103.12 Sq.meter. Ex.P. 2 is the Tax Assessment List which disclosing that originally suit schedule property is belongs to Dundaiah G. Parishawad and State of Karnataka, now the suit property is standing in the name of defendant. Ex.P. 3 is the survey sketch with respect to suit property and also with respect to property No. 252/1. Ex.P. 4 is the notice issued by the plaintiff to the defendant. Ex.P. 6 and 7 are the letter issued by Spl. Tahashildar, Recovery Officer of the Government Dues, Dharwad and they are disclosing that the plaintiff has purchased the suit property under the public auction and they have requested the city surveyor and sub-register to implement the same. Ex.P. 8 is the copy of the sale certificate. Ex.P. 10 is the receipt issued by the sub-register. Ex.P. 11 is the Property Register Card with respect to property bearing No. 252/1. Ex.P. 12 and 14 are the notice issued by the Chief Officer, Town Panchayath, Haliyal to the plaintiff to stop the running of the floor mill, complaint given by the defendant. Ex.P. 15 and 15(a) are the Karnataka Electricity Board bill and receipt. Ex.P. 16 are the notice issued by the Branch Officer,

HESCOM, Haliyal, intimating the plaintiff in stopping of the electrical connection. Ex.P. 17 is the requisition of the Municipality to the Branch Officer, HESCOM to stop electrical connection. Ex.P. 18 and 19 are the reply notices given by the plaintiff to the Branch Officer, HESCOM, Chief Officer, Town Panchayath and defendant. Ex.P. 20 and 21 are the postal acknowledgements.

13. In order to know some admitted facts between the parties I turned my attention on the evidence of defendant. The power of attorney holder of the defendant has examined as D.W.1 and he reiterates the written statement averments in his affidavit. Apart from the oral evidence Ex.D. 1 is the power of attorney executed by the defendant. Ex. D. 2 is the property tax list, Ex.D. 3 and 4 are the copies of the resolution passed by the Town Panchayath which disclosing that the khata of the property of Shanta Devi and Dundaiah. G. Parishawad bearing house No. C-164 has transferred in favour of the Government of Karnataka and in tern it transferred in favour of the plaintiff as requested by the Spl. Thashildar. Ex.D. 5 and 6 are the copies of the tax paid receipts. Ex.D. 7 is the No due certificate issued by the Town Panchayath, Haliyal, to the defendant.

14. It is not in dispute that the property bearing CTS No. 252/1 is originally belongs to Dundaiah. G. Parishawad. It is not in dispute that he was stood guarantor to the KSFC. It is in a dispute that since the borrower has become defaulter the concerned KSFC authorities have put it into public auction. It is not in dispute that the plaintiff has purchased the said property in a public auction. It is not in dispute that the plaintiff has purchased the said property in public auction. It is not in dispute that by virtue of public auction concerned authorities have issued the sale certificate in favour of the plaintiff and effect the khata of the said property in favour of the plaintiff. Now only the dispute between the parties that the suit property the car shed has been enjoying by the defendant since 1992 and it is within the knowledge of original owner of Dundaiah. G. Parishawad. It is specific contention of the defendant that by leaving the suit property the plaintiff has purchased the property bearing CTS No. 252/1. Thus the suit property is not a subject matter of auction sale proceedings.

15. However on meticulous verification of the entire evidences between the parties admittedly the original owner Dundaiah. G. Parishawad were the owner of the property bearing CTS No. 252/1 measuring 103.12 Sq. Meter. Admittedly this auction sale proceedings has been continued with respect to entire measurement of 103.12 Sq. Meter. Thus there is no space has been left at the time of auction sale conducted by the authority. Ex.P. 3 is the city surveys sketch it is clearly disclosing that the sketch of the said property. As per the said survey sketch the suit property is situated in property bearing CTS No. 252/1 only. Thus the suit property is situated within the extent of 103.12 Sq.Meter of 252/1 of the property only and it is not the separate property than 103.12 Sq.meter of property bearing CTS No. 252/1. Thus the plaintiff not only purchased the property bearing CTS No. 252/1 measuring 103.12 Sq. Meter, but also this measurement including the suit property also. Thus there is no proof to believe that the auction proceedings has left the suit property.

16. The defendant has contended that the khata of the suit property is standing in the name of defendant and he became the owner by way of long standing possession. Mere long standing possession itself is not confirmed any title to the defendant. If at all the original owner Dundaiah. G. Parishawad had the property more than measuring 103.12 Sq. meter and apart from the said property if the plaintiff has purchased 103.12 sq. meter only out of total extent by leaving the suit property the matter would have different. But what ever entire measurement possessed by the Dundaiah. G. Parishawad has been forfeited by the KSPC authority and what ever the measurement has forfeited by the KSPC authority had been purchased by the plaintiff with due process of law. Thus the plaintiff became the owner of the entire extent including the suit property and the suit property is not separated from the property bearing CTS No. 252/1 measuring 103.12 Sq. Meter. Thus the plaintiff is an absolute owner of the suit property. Hence, I answered Issue No. 1 in the Affirmative.

17. **Issue No. 2 and 3 and Additional Issue No. 1:** Since the said issues are inextricably mixed up with each other I taken them together for common discussion in order to avoid the repetitions.

18. This defendant has specifically contended that he has perfected his right over the suit property by way of adverse possession. Of course the power of attorney holder himself has

examined as D.W. 1 and reiterates the written statement averments in his affidavit by contending that he is in possession of the suit property since 1992. Now it is settled principal of law that, in order to grant the right and title by virtue of adverse possession the defendant must have enjoyed the suit property more than 12 years with out any interruption. Now it is benefit to refer the decision in ILR 2009 Karnataka 1099; in between Baswanthrao since deceased by his Lrs. Vs. Rajkumar in para 14 held as here under:

“ In so far as proof of adverse possession is concerned, it is a well-settled principle that a party claiming adverse possession must prove that his possession is “nec vi, nec lam, nec precario’, that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. Therefore, a person who claims adverse possession should show:

- (a) On what date he came into possession.
- (b) What was the nature of his possession.
- (c) Whether the factum of possession was known to the other party.
- (d) How long his possession has continued, and
- (e) His possession was open and undisturbed.

19. As per the dictum of Hon'ble High Court of Karnataka the defendant required to plead and proved that what date he came enter into the possession of the suit property and his possession must have in the knowledge of real owner. But the defendant has not pleaded what was the date he entered into the possession of the suit property. Of course the defendant is contending that till Dundaiah G. Parishawad is the owner and his possession known to the original owner. But the moment KSFC authorities have forfeited the same and put it into public auction and the plaintiff has purchased the same the original owner Dundaiah G. Parishawad has lost his right, title over the same. Thus there is no pleading and proof as required under law to believe that the defendant has perfected his title by way of adverse possession.

20. Of course the plaintiff has contended that, the defendant was a tenant under the original owner, when he purchased the property the defendant became a tenant under him and he has quit the tenancy by issuing the notice. But other side has disputed it. The plaintiff has not placed any materials to believe that the possession of the defendant is under the tenancy. Since D.W. 1 deposed that defendant is not the tenant under the original owner, absolutely there is no materials to believe that the defendant is a tenant under the original owner. Thus it may be believe that defendant is not a tenant under the plaintiff.

21. According to the defendant, original owner Dundaiah. G. Parishawad has not made as party to the proceedings. Hence suit is liable to be dismissed. But the plaintiff has purchased the suit property including its part under the auction purchased with due process of law, it is not required to implead the earlier owner. Since no right and title has left with the earlier owner. Hence, I answered Issue No. 2 and Additional Issue No. 1 in the Negative and Issue No. 3 in the Affirmative.

22. **Issue No. 4:** Since the plaintiff has successfully proved that he is an absolute owner of the suit property by virtue of sale transaction and defendant has no right to continued his possession. The plaintiff is entitled the relief of declaration over the suit property and defendant is required to hand over the same by removing the car shed. Hence, I answered this issue in the Affirmative.

23. **Issue No. 5:** In view of the reasons stated above, I proceed to pass the following:

### **ORDER**

The suit of the plaintiff is hereby decreed with cost.

The defendant is here by directed to remove the car shed and hand over the possession of the suit property to the plaintiff within 30 days from this order.

Failure on the part of the defendant, plaintiff can get remove at the cost of defendant and get the possession with due process of law.

Draw Decree Accordingly.

(Dictated to the Stenographer, transcribed by him, revised by me and then pronounced in the open court, this the 19<sup>th</sup> day of December 2014)

(B.C. CHANDRASHEKAR)  
Civil Judge & JMFC,  
Haliyal.

### **ANNEXURE**

#### **1. Number of witnesses examined for plaintiff:**

P.W.1 : Maruti Yallappa Shinde

#### **2. Number of witnesses examined for defendat:**

D.W. 1 : Shrinivas Srikanth Gjotnekar

#### **3. List of documents exhibited for plaintiff:**

Ex.P. 1 : Original sale certificate  
 Ex.P. 2 : Tax Assessment List  
 Ex.P. 3 : Survey sketch with respect to suit property  
 Ex.P. 4 ; Notice issued by the plaintiff to the defendant.  
 Ex.P. 5 : Postal cover  
 Ex.P.6 & 7 : Letter issued by Spl. Thashildar, Recovery Officer, all the Government dues, Dharwad  
 Ex.P. 8 : Copy of the sale certificate.  
 Ex.P. 9 : Sketch  
 Ex.P. 10 : Receipt issued by the sub-register.  
 Ex.P. 11 : Property Register Card with respect to

- property bearing No. 252/1.
- Ex.P. 12 & 14 : Notice issued by the Chief Officer, Town Panchayath, Haliyal to the plaintiff
- Ex.P.15 & 15(a): Karnataka Electricity Board bill and receipt.
- Ex.P. 16 : Notice issued by the Branch Officer, HESCOM, Haliyal.
- Ex.P. 17 : Requisition of the Municipality to the Branch Officer, HESCOM
- Ex.P.18 & 19 : Reply notices given by the plaintiff to the Branch Officer, HESCOM, Chief Officer, Town Panchayath and defendant.
- Ex.P.20 & 21 : Postal acknowledgements.

**4. List of documents exhibited for the defendant:**

- Ex.D. 1 : Power of attorney executed by the defendant.
- Ex.D.2 : Property tax list,
- Ex.D.3 & 4 : Copies of the resolution passed by the Town Panchayath
- Ex.D.5 & 6 : Copies of the tax paid receipts.
- Ex.D. 7 : No due certificate issued by the Town Panchayath, Haliyal to the defendant.

(B.C. CHANDRASHEKAR)  
Civil Judge & JMFC,  
Haliyal.