

**IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC,  
AT KUNDAPURA**

**Present: SHRI. PRAVEEN NAYAK, L.L.M.,  
Principal Civil Judge and  
JMFC, Kundapura.**

**Dated on this 18<sup>th</sup> day of January, 2019**

**O.S. No. 177/2009**

- Plaintiff** : 1. Smt. Rukmini S. Hegde, 68 years,  
2. Smt. Premalatha S. Shetty, 61 years  
3. Sri M. Vittal Shetty (now dead)  
Rep. by Defendant No.3(a)  
3(a) Smt. Vijaya A. Shetty, 41 years  
D/o Late M. Vittal Shetty  
R/o Anagalli Village,  
Kundapura Taluk,  
PO: Anangalli.  
4. Sri Jeevananda Shetty, 41 years  
Nos 1 to 3 are children of late Subbakka Shedthi  
and No.4 is the son of late Hemalatha Shetty  
1 to 3 and 4 residents of NISARGA,  
Gundigoli, Basroor Village and Post,  
Kundapura Taluk.

(By Sri A.B.S., Advocate)

V/s

- Defendant** : 1. Mr. Anthony D'Mello, 64years  
S/o Felix D'Mello,  
2. Smt. Showrie D'Mello, 62 years,  
D/o Felix D'Mello,  
3. Louis Mascarhenas, 60 years,  
W/o late Maria D'Mello (now dead)  
No legal heirs, but staying with  
1<sup>st</sup> defendant.

All residents of Margoli,  
Basroor Village and Post,  
Kundapura Taluk.

(By Sri S.M.S., Advocate for D1 & D2)  
(D3-Abated)

1. Date of institution of Suit : 31-07-2009
2. Nature of Suit : Suit for permanent injunction
3. Date of commencement of  
Plaintiff's evidence : 09-02-2010
4. Date of Judgment : 18-01-2019
5. Total Duration : Year/s:Month/s:Day/s  
09 05 18

### **J U D G M E N T**

This is a suit for permanent injunction.

2. The averments of the plaint in brief are as follows:

The entire suit 'A' to 'D' schedule properties bearing Survey No. 187/12 and Survey No.180/11C were originally belonged to Late Subbakka Shedthi. The plaintiffs are her legal heirs. The defendant No.1 to 3 filed declarations for the portion of some lands in Survey No.187/12 and accordingly, the Land Tribunal has granted the 'A' schedule property in favour of the defendant No.1 and the 'B' schedule property in favour of defendants No. 2 and 3. The original Survey No.187/12 contained 18 cents of lands and from the same 6 cents of

lands was granted to the defendant No.1 and another 2 cents of land was granted to the defendants No. 2 and 3. The defendants No.1 to 3 are having their house properties in their respective lands. The remaining extent of 10 cents in Survey No.187/12 continued to be in possession of the landlord. The 'D' schedule property is an independent adjacent land. The plaintiffs are in possession of 'C' and 'D' schedule properties. The defendants having no manner of right, title or interest over the 'C' and 'D' schedule properties are trying to encroach upon those properties. During the end of March 2009 the defendant No.1 tried to construct a building in 'C' schedule property. The plaintiffs got issued legal noticed dated 08-04-2009 by warning the defendant No.1 from disturbing their possession. However, the defendant No.1 instead of stopping interference has given untenable reply. The defendants No.2 and 3 also joined the defendant No.1 and started threatening to enter upon the 'C' and 'D' schedule properties. The plaintiff has no efficacious remedy under law to protect their possession. Hence, the suit.

3. In pursuance of the suit summons, the defendants No.1 and 2 have appeared through their counsel and later the counsel for the defendants No.1 and 2 have filed retirement memo. The defendant No.3 died during the suit.

4. In the written statement, the defendants No.1 and 2 have denied the case of the plaintiffs, it is stated that the suit of the plaintiff is false, frivolous and fictitious, the boundaries mentioned in the plaint are not true and correct. The defendants and their family members are jointly enjoying the entire lands. The husband of the plaintiff No.1 Sri Sadananda Hegde being the Tahsildar at Kundapura at that time had

misused his power and caused injustice to the defendants No.2 and 3. The Ex P2 produced by the plaintiff is forged document. The defendants have denied that only the plaintiffs are the legal heirs of Subbakka Shedthi. They have denied that the plaintiffs are in possession of 'C' and 'D' schedule properties. They have further denied the illegal interference caused by them in the suit properties. It is further stated that the defendants are old aged persons relying upon the agricultural activities and they have no other land except the suit schedule properties. Hence, prayed to dismiss the suit with costs.

5. On the basis of the pleadings of the parties, learned predecessor-in-office has framed following issues:

1. Whether the plaintiffs prove that they are in lawful possession and enjoyment over 'C' and 'D' schedule properties as on the date of suit?
2. Whether the plaintiffs prove the interference by the defendants as contended in the plaint?
3. Whether the plaintiffs are entitled for the relief as prayed for?
4. What decree or order?

6. The plaintiffs in order to prove their case have examined one Sridhar Shetty, husband of plaintiff No.2 as PW1 and got marked documents Ex P1 to Ex P8. On the other hand, defendants have not chosen to step into the witness box and no documents got marked on their behalf. But, Ex D1 and Ex D2 are confronted by defendants during the cross examination of PW1.

7. Heard the arguments of learned counsel for the plaintiffs and arguments of the defendants taken as nil and perused the materials available on record.

8. The answers to the above Issues are as under:

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:**

9. **Issues No.1 and 2:** As these issues are inter-linked with each other, they are taken up together for common discussion to avoid repetition of facts.

The plaintiffs have contended that they are the owners in possession of suit 'C' and 'D' schedule properties and the defendants No.1 to 3 are unlawfully interfering in their lawful possession over the same. Per contra, the defendants No. 1 and 2 have denied the contentions of the plaintiffs and further contended that they are in possession over the entire suit properties and cultivating the same.

10. In order to prove their case the plaintiffs have got examined the husband of the plaintiff No.2 as PW1. In his chief examination he has reiterated the plaint averments and got marked Ex P1 to Ex P8.

11. During the cross-examination PW1 has deposed that the plaintiff No.1 is his sister-in-law. The plaintiff No.2 is his wife, the plaintiff No.3 is also his sister-in-law. The plaintiff No.4 is the son of his sister-in-law. The 'A' and 'C' schedule properties are measuring 18 cents and the 'B' schedule property is situated at the eastern side of the said 18 cents of the land. He has denied that there is a boundary wall between 'A' and 'D' schedule properties. At the time of order of Land Tribunal as per Ex P1 and Ex P2 Subbakka Shedthi was alive. At that time he was residing in a different place as a bank employee. He has denied that there are four houses in the suit properties. He has deposed that there are only two properties situated in the 'A' and 'B' schedule properties. He has deposed that the sketch pertaining to the 'A' and 'D' schedule properties have been given to his advocate. He has denied that the husband of plaintiff No.1 being a Tahasildar has fraudulently cheated the defendants by not granting the entire extent of land to which they have applied. He has further denied that they have done plotting in the suit properties with the help of local MLA. He has admitted that all the legal heirs of Subbakka Shedthi are not made as parties in the suit. He has further admitted that he has no share in the suit property. He has no document to show that Subbakka Shedthi was the moolgenidar of the entire property. He has denied that the said Subbakka Shedthi was not the moolgenidar of 'D' schedule property. The PW1 has further deposed that the joint family consists of sixteen properties and only four of them have filed the present suit. He has deposed that only 6 cents of land out of eighteen cents was granted in favour of the defendants. The suit property was measured in the year 2016. The Ex D1 was available at the time of filing of the suit. He has

admitted the endorsement on Ex P7. He has denied that a false suit has been filed to harass the defendants.

12. On going through the documents produced by the PW1, Ex P1 and Ex P2 are the orders of Land Tribunal, wherein it is clearly appearing that the defendant No.1 has been granted six cents and the defendants No.2 and 3 have got two cents as per the scheduled 'A' and 'B' properties respectively. Ex P3 is the office copy of the legal notice, wherein it is clear that the plaintiffs have warned the defendants not to encroach upon 'C' and 'D' schedule properties. Ex P4 shows that the defendants have denied the possession of the plaintiffs over those properties. Ex P5 to Ex P8 are the records of rights pertaining to suit properties. Among them, Ex P5 and Ex P6 show the name of the defendants in respect of 'A' and 'B' schedule properties. Ex P7 and Ex P8 are standing in the name of plaintiffs in respect of 'C' and 'D' schedule properties.

13. On going through the documents placed on record it is clear that the 'A' and 'B' schedule properties have been granted by the Land Tribunal in favour of the defendant No.1 and defendants No.2 and 3 respectively. The measurements of those properties are six cents and two cents respectively. The Land Tribunal order dated 24-04-1979 and dated 08-09-1982 are very much clear on these aspects. The same is supported by Ex P5 and Ex P6, which shows only the extent of six cents, and two cents stand in the names of the defendants.

14. The plaintiffs have contended that the 'C' and 'D' schedule properties are standing in their names. In this regard they have relied upon Ex P7 and Ex P8. Section 135 of Land Revenue Act clearly

provides that there shall be a presumption in respect of entries in the record of rights as to possession. Ex P7 and Ex P8 clearly show that the 'C' and 'D' schedule properties are possessed by the plaintiffs. The said documents are not rebutted by the defendants by producing any oral and documentary evidence. The entries in Ex P7 and Ex P8 remained as they are. Under such circumstances it can be easily held that the plaintiffs are in possession of schedule 'C' and 'D' properties.

15. The Ex P3 shows that the plaintiffs have got issued legal notice by warning the defendants from interfering in the peaceful possession of them over the suit 'C' and 'D' schedule properties. Ex P4 shows that the defendants have denied the possession of plaintiffs. It is settled position of law that mere denial of rights of the plaintiffs over the suit property in the written statement is sufficient to hold that the defendants are interfering in the possession of the plaintiffs over the suit property. The defendants have clearly denied the rights of plaintiffs over the suit 'C' and 'D' schedule properties in the written statement. The contents of the written statement coupled with Ex P3 and Ex P4 are sufficient to hold that the defendants are illegally interfering in the possession of the plaintiffs over and 'C' and 'D' schedule properties. Hence, I answer Issue Nos. 1 and 2 in the **Affirmative**.

16. **Issues No.3:** In the instant suit the plaintiffs have sought for the relief of permanent injunction in respect of the 'C' and 'D' schedule properties. While answering issue Nos. 1 and 2, it is already held that the plaintiffs are in lawful possession and enjoyment over those properties as on the date of the suit and the defendants are interfering in their possession. In the instant case the defendants have failed to step into witness box to disprove the case of the plaintiffs. It is

settled position of law that an adverse inheritance shall be drawn against the party who has failed to step into witness box to prove his contentions. The learned counsel for the defendant has failed to elicit any admissions from the mouth of the PW1 to disprove the averments of the plaint. Under such circumstances the plaintiff has made out grounds to grant permanent injunction as sought for. Hence, I answer Issue No.3 in the **Affirmative**.

17. **Issue No.4:** In view of findings on issues No.1 to 3, this Court proceeds to pass the following:

### **ORDER**

The suit of the Plaintiff for the relief of permanent injunction is hereby decreed with costs.

The defendants, their agents and their representatives are hereby restrained by way of permanent injunction from entering upon or trespassing into 'C' and 'D' schedule properties and also from disturbing the peaceful possession and enjoyment of the plaintiffs over the said properties.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed by her, corrected and signed by me and then pronounced in the Open Court on this 18<sup>th</sup> day of January, 2019.)

(Praveen Nayak )  
Principal Civil judge and J.M.F.C.  
Kundapura.

**ANNEXURE****1. List of witnesses examined for the plaintiff:**

PW1 : Mr. Sridhar Shetty

**2. List of documents marked for the plaintiff:**

Ex P1: C.C. of L.T. in TRI/9094/78-79 dt: 24-04-79

Ex P2: C.C. of order of L.T. in HST 62/1981-82 dt: 08-09-82

Ex P3: Office copy of the Legal Notice dt: 08-04-2009

Ex P4: Original reply notice

Ex P5 to P8: RTC extracts

**3. List of witnesses examined for the defendant:**

-Nil-

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

Ex D1: FMB sketch

Ex D2: C.C. of record of rights

Principal Civil Judge and JMFC,  
Kundapura.

kdp/-