

**IN THE COURT OF CIVIL JUDGE AT HARAPANAHALLI
PRESENT**

SRI. PRAKASH ARJUN BANASODE, B.A. L.L.B.,

Civil Judge & J.M.F.C.
Harapanahalli.

Dated 19th day of February-2015

ORIGINAL SUIT NO.29/2013

Plaintiff/s: C.N.Lingaraj @ Lingappa S/o Nagaappa,
Aged about 48 years,
Occ:Business and agriculture,
R/o Chigateri village
Harapanahalli Taluk,
Davanagere Taluk.

(By Sri. KBR Advocate)

V/s.

Defendant/s: Smt.Sakamma W/o Mudimallappa,
Aged about 60 years, Occ: Agriculture,
R/o Chigateri village,
Harapanahalli Taluk,
Davanagere District.

(By Sri AKA Advocate)

Date of Institution of suit :-	23-01-2013
Nature of suit :-	Declaration and perpetual injunction.
Date of commencement of recording of evidence :-	13.08.2013
Date of pronouncement of Judgment :-	19-02-2015
Total duration :-	Year/s Month/s Day/s
	01 11 26

Civil Judge, Harapanahalli

J U D G M E N T

1. This is a suit instituted by the plaintiff against the defendants for declaration and perpetual injunction in respect of suit schedule property open space bearing door No.26 measuring 49 X 39 cubits situated at Chigateri village in Harapanahalli Taluk.

2. **The case of the plaintiff in brief are as under:-**

That, originally one Kuldamanavara Pakkerappa and his wife Huchhavva were the owners of land bearing Sy.No.273 measuring 3 acre 76 cents situated at Chigateri village and also the suit schedule property. The said Pakkerappa and Huchhavva got two sons by name Mudimallappa and Nagappa. The said Nagappa is none else the father of plaintiff. The defendant No.1 is wife of Mudimallappa and defendant No.2 is the daughter of said Mudimallappa. The plaintiff's father had first wife Bheemavva. The plaintiff born through first wife Bheemavva. The above said Mudimallappa having son Nagendrappa and a daughter Gangamma through defendant No.1. The said Mudimallappa and his son Nagendrappa are no more. The second wife of the plaintiff's father Nagappa i.e. Shambakka and children are alive. The plaintiff further submits that when he was aged about 4 years his mother Bheemavva died. The plaintiff's uncle Mudimallappa apprehending that

Nagappa might have married another wife and thereby the plaintiff became orphan. As a result the said Mudimallappa gifted the suit schedule property and another land in favor of plaintiff through a registered gift deed dated 24.12.1970 by appointing a minor guardian Huchhavva wife of Pakkerappa i.e. grand-mother of plaintiff as guardian of minor plaintiff in respect of suit schedule property and other landed property.

3. This being so, since the date of gift deed, the plaintiff is in peaceful possession and enjoyment of suit schedule property bearing door No.26 measuring 49X39 cubits situated at 6th ward at Chigateri village in Harapanahalli Taluk. So the plaintiff is in peaceful possession and enjoyment of land bearing Sy.No.273 paike to an extent of 1 acre 88 cents of Chigateri village till today. The Gramapanchayath authorities have allotted the door number to the suit schedule property more fully described by the boundaries in the gift deed by passing resolution No.05/2011-12 dated 27-07-2011. The defendant No.1 and 2 have no rights and interest in the suit schedule property. The defendants are enjoying their share i.e. which was allotted in favour of Nagendrappa. The property allotted to the plaintiff is the exclusive properties of plaintiff. This being the state of affairs the defendant No.1 and 2 having no any rights over the suit schedule property but they are

unnecessarily trying to interfere with the peaceful possession and enjoyment of the plaintiff which was peacefully resisted by this plaintiff. On 13-01-2013 the defendants all of sudden appeared on the suit schedule open space and trying to plant the poles in the suit schedule property. The plaintiff with the help of neighbors and elders of the village protested and send them back from the suit schedule property. Therefore the plaintiff has constrained to file the suit against the defendants.

4. In response to the suit summons, the defendant No. 1 and 2 have appeared through heir counsel and resisted the claim of the plaintiff. The defendant No.2 filed his Written Statement. The defendant No.1 filed memo stating that he adopted the Written Statement of defendant No.2. The contents of the written statement of defendant No.2 are as under:

The averments made in the plaint paras are false and vexatious and not tenable under the law except admitted by this defendant. The para No.2 of the plaint is admitted by the defendant. The para No.3 of the plaint are false and specifically denied by this defendant. The defendant No.1 and 2 are having a share in the suit schedule property. The suit properties are not the self acquired properties of Mudimallappa. The suit schedule property originally belongs to K.Pakkerappa. Hence the

registered gift deed executed by the said Mudimallappa in favour of plaintiff is not binding on the defendant No.1 and 2 and same is null and void. The plaintiff has misrepresented with facts and circumstances before the Gram Panchayath authorities and revenue authorities and got changed mutation entries. The defendant No.1 is the wife of the Mudimallappa. The defendant No.2 is the daughter. Hence they have got equal share over their ancestral properties. It is denied that the defendants interfered and obstructed in the peaceful possession and enjoyment of the plaintiff. The plaintiff alone is not the owner and possessor of the suit schedule properties. The said gift deed is not acted upon. Therefore it is prayed it is prayed to dismiss the suit.

5. On the basis of the pleadings, I have framed the following issues:

- 1) Whether the plaintiff proves that his uncle Mudimallappa gifted the suit schedule property and another land in his favor through a registered gift deed dated 24/12/1970 by appointing a minor guardian Huchavva wife of Pakkerappa?
- 2) Whether the plaintiff further proves that since from the date of gift deed he is in peaceful possession and enjoyment of suit schedule property?
- 3) Whether the plaintiff further proves that he is the absolute owner of the suit schedule property?

- 4) Whether the plaintiff further proves that he is in possession of the suit schedule property?
- 5) Whether the plaintiff further proves that the alleged obstruction by the defendants for the enjoyment of the suit schedule property?
- 6) Whether the defendants prove that the registered gift deed executed by the said Mudimallappa in favour of plaintiff is not binding on them and the same is null and void?
- 7) Whether the defendants prove that they are having share in the suit schedule property?
- 8) Whether the plaintiff is entitled for the reliefs as sought for?
- 9) What decree or order?

6. To substantiate the case of the plaintiff, plaintiff himself examined as Pw-1 and also examined other witnesses as Pw-2 to 4 and got marked 16 documents at Ex.P-1 to P-16.

7. On the other hand, the defendants neither have chosen to adduce evidence on their behalf nor produced any documents on their behalf.

8. Heard learned counsel for the plaintiff and defendants.

9. My findings on the above points are as under:-

Issue No.1 :- In the Affirmative.

Issue No.2 :- In the affirmative.

Issue No.3 :- In the affirmative.

Issue No.4 :- In the affirmative.
Issue No.5 :- In the affirmative.
Issue No.6 :- In the negative.
Issue No.7 :- In the negative.
Issue No.8 :- In the affirmative.
Issue No.9 :- As per final order for the
following:

:-: REASONS :-:

10. Issue No.1 to 4:-

These issues are interconnected to each other, to avoid the repetition of facts and for the sake of convenience, I have taken-up these issues together for common discussion.

As I have already stated what the case of the plaintiff and defendants is.

The counsel for plaintiff vehemently argued that the plaintiff is the owner and possessor of the suit schedule property by virtue of gift deed dated 24.12.1970. The uncle of the plaintiff Mudimallappa gifted the suit schedule property when the plaintiff was minor in favour of his minor guardian Hucchavva wife of Pakkerappa. Since the date of gift deed, the plaintiff is in possession and enjoyment of the suit schedule property. The panchayath authorities have given door number to the suit property bearing No. 26 measuring 49X39 situated at Chigateri village in Harapanahalli Taluk. The defendants have got no right, title and interest over the suit schedule property but they are causing illegal

interference and obstruction in the peaceful possession and enjoyment of the suit schedule property. Therefore it is prayed to decree the suit.

11. On the other hand, the counsel for defendant Sri AKA Advocate submitted his arguments contending that the gift deed dated 24.12.1970 executed by Mudimallappa in favour of minor plaintiff through minor guardian Hucchavva wife Pakkerappa is not binding on the rights of the defendant No.1 and 2. The plaintiff is alone not the owner and possessor of the suit schedule property. The defendant No.1 and 2 have got equal share in the suit schedule property. The plaintiff has given wrong information and misrepresented the Panchayath authorities and got mutated his name in respect of suit schedule property as owner. The suit property and other properties are not the self acquired properties of Mudimallappa as the same are originally belongs to K.Pakkerappa. Hence the gift deed executed by Mudimallappa in favour of plaintiff is not binding on the defendant No.1 and 2 and same is to be declared as null and void. The plaintiff has not examined as one of the attesting witnesses of the gift deed dated 24.12.1970. As per Sec.68 of the Indian Evidence Act, the gift deed is to be proved by examining one of the attesting witness. But the plaintiff has not done so. Hence the said gift deed

dated 24.12.1970 is said to be not have been proved by the plaintiff. Therefore it is prayed to dismiss the suit.

12. To substantiate the case of the plaintiff the plaintiff himself examined as Pw-1 and also got examined other 3 witnesses as Pw-2 to 4 and also got marked 16 documents at Ex.P-1 to 16.

13. On the other hand, the defendants neither have chosen to adduce evidence on their behalf nor produced any documents on their behalf.

The Pw-1 in his evidence reiterated the plaint averments. The Pw-2 to 4 who are supported to the case of the plaintiff and stated that the plaintiff is the owner and possessor of the suit schedule property by virtue of gift deed 24.12.1970. In addition to the oral evidence the plaintiff has got marked 16 documents. Ex.P-1 is the Registered gift deed dated 24.12.1970. A perusal of the same it reveals that one Mudimallappa had executed the gift deed in favour of minor plaintiff through minor guardian Hucchavva wife of Pakkerappa in respect of suit schedule property and another landed property. In the said gift deed, an open space measuring 49X39 has been mentioned. The said property is the suit property of the present case. The Panchayath Authorities have given door number 26 to the said open space. The boundaries to the open space mentioned in the gift deed and the

boundaries mentioned in the suit property are one and the same. Therefore Ex.P-1 registered gift deed made it clear that the plaintiff is the owner and possessor of the suit schedule property. The Ex.P-1 Registered gift deed also made it clear that the said Mudimallappa has handed over the possession of the suit property in favour of plaintiff on the day of execution of the registered gift deed. Therefore it also clear that the plaintiff is in possession and enjoyment of the suit schedule property since the execution of the registered gift deed i.e. Ex.P-1. The argument canvassed by the counsel for the defendant that the gift deed is compulsorily attested document as per Sec.68 of the Indian Evidence Act. But as per the Sec.68 of Indian Evidence Act the Will is only the document wherein one of the attesting witness has to be examined in order to prove the said Will. But it is not necessary and law not mandates that one of the attesting witness of the gift deed is to be compulsorily examined to prove the gift deed. Therefore the contention raised by the counsel for the defendant is not sustainable and not acceptable.

14. The counsel for the plaintiff relied upon the following decisions:

1. AIR 1981 Allahabad -Page 50
2. AIR 1977 Kerala- Page 41
3. AIR -1980 - Allahabadf- Page-394

I have gone through the said decisions, the ratio laid down in the said decisions is aptly applicable to the present case on hand. Moreover, the counsel for defendant has not specifically denied the said gift deed. Under these circumstances, I am of the opinion that the plaintiff has clearly established that he is owner and possessor of the suit schedule property by virtue of gift deed dated 24.12.1970. Hence, I **answer issue No.1 to 4 in the affirmative.**

15. Issue No.5:

The plaintiff contends that the defendants caused illegal interference and obstruction in the peaceful possession and enjoyment of the suit schedule property. To prove this issue the plaintiff in his plaint as well as in his evidence clearly stated that the defendants are causing illegal interference and obstruction in the peaceful possession and enjoyment of the plaintiff over the suit schedule property. The Pw-2 to 4 have also deposed before the court that the plaintiff is in peaceful possession of the property and defendant is causing illegal interference in the suit schedule property. The evidence of Pw-1 to 4 is remained unchallenged and uncontraverted. The defendants have not rebutted the oral and documentary evidence of the plaintiff. Hence I am of the opinion that the plaintiff has proved that the interference and obstruction by the defendants over the

suit schedule property. Hence I **answer issue No.5 in the affirmative.**

16. Issue No.6:-

It is burden casted upon the defendants to prove that the registered gift deed executed by the Mudimallappa in favour of plaintiff is not binding on them and the same is null and void. The defendants have only pleaded in their Written Statement that the gift deed dated 24.12.1970 executed by Mudimallappa in favour of plaintiff is not binding on them and same is null and void. But the defendants have not chosen to adduce oral evidence or documentary evidence to prove the said fact. What prevented the defendants to appear before the court and to prove the said fact. In the absence of oral and documentary evidence on the side of the defendants it cannot be said that the gift dated 24.12.1970 executed by Mudimallappa in favour of plaintiff is not binding on them and same is null and void. In fact the plaintiff has got produced the said Ex.P-1 registered gift deed executed by Mudimallappa in favour of plaintiff in respect of suit property. The said document is registered document. The said gift deed has got legal sanctity in the eye of law. Based on the registered gift deed, the name of plaintiff is mutated in the revenue records as owner and possessor of the suit schedule property. Therefore the legal transfer has been taken place in respect of suit

property in the name of plaintiff. Therefore the plea taken by the defendants that the gift deed dated 24.12.1970 is not binding on the defendants and same is null and void is not acceptable and tenable. The defendants have not rebutted the oral and documentary evidence of the plaintiff in respect of suit property. Hence under these circumstances I am of the opinion that the defendants failed to establish that the registered gift deed executed by the Mudimallappa is not binding on them and the said document is not null and void. Hence I **answer issue No.6 in the negative.**

17. Issue No.7 and 8:

These issues are interconnected to each other, to avoid the repetition of facts and for the sake of convenience, I have taken-up these issues together for common discussion.

In view of the findings given issue No.1 to 6, this court is of the opinion that the plaintiff has proved that she is the owner and possessor of the suit schedule property by virtue of registered gift deed dated 24.12.1970 executed by Mudimallappa in favour of plaintiff in respect of suit schedule property. When the plaintiff became owner and possessor of the suit schedule property by virtue of registered gift deed i.e. Ex.P-1 then the defendants have got no share in the suit schedule property. Even though the defendants are the

legal heirs of the deceased Mudimallappa. The defendants contended that the suit property is government land and there the Mudimallappa did not have right to execute the gift deed in favour of plaintiff. But in this regard the defendants have not placed any documents to show that the suit property is government land. Therefore the plea taken by the defendants is not acceptable and not believable. Hence, I answer **issued No.7 in the negative and issue No.8 in the affirmative.**

18. **Point No.9:-** In view of the above findings, I proceed to pass the following:

-:: ORDER ::-

The suit of the plaintiff is decreed with costs.

It is declared that the plaintiff is the owner and possessor of the suit schedule property door No.26 measuring 49X39 situated Chigateri village in Harapanahalli Taluk.

The defendants are hereby restrained from causing illegal interference and obstruction in the peaceful possession and enjoyment of the plaintiff over the suit property by means of perpetual injunction.

Draw decree accordingly.

(Dictated to the Stenographer directly on computer, after typing, corrected, signed and then pronounced by me in the open Court this 19th day of February-2015)

(PRAKASH ARJUN BANASODE)
Civil Judge, Harapanahalli.

:: ANNEXURE ::

1. Witnesses examined for the plaintiff :-

Pw-1 :- Lingaraj
Pw-2 :- K.Nagappa
Pw-3 :- Shantappa
Pw-4 :- Shivakumar

2. Witnesses examined for the defendant :-

- Nil -

3. Documents exhibited for the plaintiff : -

Ex.P-1 :- Registered gift deed dated 24.12.1970
Ex.P-2 :- The assessment extract bearing door
No.26 of Chigateri village for the year
2012-2013
Ex.P-3 :- DCB Register Extract bearing door No.26
of Chigateri village for the year 2012-13
Ex.P-4 :- The copy of Resolution passed by the
Gramapanchayath, Chigateri.
Ex.P-5 :- Tax paid receipt No.1050 dated 26.09.12
Ex.P-6 :- Tax paid receipt No.1049 dated 26.09.12
Ex.P-7 :- Tax paid receipt No.2474 dated 06.01.12
Ex.P-8 :- Tax paid receipt No.2465 dated 05.01.12
Ex.P-9 :- Tax paid receipt No.2473 dated 06.01.12
Ex.P-10:- ROR bearing Sy.No.272 for the year
1988-89 to 1992-93

- Ex.P-11:- ROR bearing Sy.No.272 for the year 1994-95 to 1998-99
- Ex.P-12:- ROR bearing new Sy.No.273/1 for the year 2012-2013 in the name Gangamma
- Ex.P-13:- ROR bearing new Sy.No.273/1 for the year 2012-2013 in the name of Myasara Durugamma
- Ex.P-14:- Certified copy of M.R.No.42/2008-09
- Ex.P-15:- Encumbrance Certificate dtd:21-9-2012
- Ex.P-16:- Certified copy of gift deed

4. Documents exhibited for the defendants: -

- Nil -

(PRAKASH ARJUN BANASODE)
Civil Judge, Harapanahalli.