

IN THE COURT OF THE I ADDL. CIVIL JUDGE AND
.J.M.F.C. AT : KALABURAGI

:Present:

Sri. N. Subramanya, B.A.L, LL.B.
I Addl. Civil Judge and JMFC,
Kalaburagi

O.S.No.390/2015

Dated this the 10th day of March -2016

Plaintiff:

Smt. Laxmibai,
W/o Benakaji Kulkarni,
Age:84 years, Occ: Household,
R/o H.No.19, Maitri Nivas,
N.V. Compound,
Vitrhal Naar,
Kalaburagi

(By Sri. R.V. Nadagouda, Advocate)

//Versus//

Defendant:

Syed Asif,
S/o Syed Ahmed
Age:32 years,
Occ: Business,
R/o Nimara Industries,
Canara Bank ATM Point
Opp: M.R. Medical College,
Sedam Road,
Kalaburagi

(Exparte)

Date of Institution of suit : 05-08-2015.

Nature of the suit : Suit for Perpetual
injunction.

Date of commencement of
Evidence : 08-03-2016.

Date of pronouncement of
judgment : 10-03-2016.

Total Duration : **Year/s** **Month/s** **Day/s**
00 07 05

J U D G M E N T

1. This is a suit for the relief of injunction simplicitor.
2. Briefly stated facts of the case are that the plaintiff became the owner of the plaint schedule property having purchased the same by virtue of a registered sale deed dated 20-6-2013, executed by one Abdul Muqtadeer the erstwhile owner. Ever since the date of purchase she has been in possession thereof. But the defendant having no

right whatsoever tried to interfere with plaintiff's possession. Therefore, she had to file this suit.

3. Despite service of summons through paper publication, the defendant did not appear before the Court, and therefore, he was placed exparte.
4. Plaintiff, therefore, was called upon to prove the case put forth by her. Accordingly, she examined herself as P.W.1, and got marked 9 documents.
5. After the closure of the evidence, I heard arguments. Based on the pleadings the following points arise for the determination of the Court.

POINTS

1. Does the plaintiff prove that she is in possession of suit property as on the date of suit?
2. Does the plaintiff prove the alleged interference by the defendant?

3. Is plaintiff entitled for the relief of perpetual injunction?
4. What order or decree?
6. My findings on the above points are here under;-
Point No.1: Affirmative
Point No.2: Affirmative
Point No.3: Affirmative
Point No.4: As per final order

REASONS

7. **Points No.1 to 3:-** For the sake of convenience all these points taken up together for common discussion.
8. At the very outset, I deem it proper to say that the defendant has not traversed the averments of the plaint by filing written statement. If the written statement is not filed the Court may pronounce judgment. This, however, is not compulsory and mandatory. Pronouncing the judgment is left to the discretion of the

Court. That is what is clear from order VIII Rule 5 of CPC. In case the Court is not satisfied to pronounce judgment it may ask the plaintiff to substantiate the claim. In this case the same procedure has been followed. For that reason the plaintiff has adduced evidence both oral and documentary. The same has remained unchallenged and undisputed. The law is very well settled. Merely because the evidence is not tested by means of cross-examination by defendant, it does not lead to conclude that whatever pleaded in the plaint is true and acceptable. On that ground itself no suit can be decreed automatically. In fact, the Court must be circumspect when the situation like this arises. Particularly when the suit has to be heard exparte the role of the Court is vital. In this background now let me have a look at the evidence on record.

9. Needless to say that the evidence of plaintiff is replica of the plaint. That is why there is no necessity to highlight the same. Coming to documentary evidence, I see that through Ex.P-1, the sale deed the plaintiff purchased the suit property. This is a registered document. So it is presumed to be validly executed. The recital of this document goes to show that the possession of the suit property has already been delivered to plaintiff. Therefore, I would say that the plaintiff is in possession of the suit property. Ex.P-2 to 8 are ancillary documents. Hence, they do not assume much importance as Ex.P-1 itself proves the possession of plaintiff.
10. Regarding the interference, plaintiff has given evidence on oath. As such, her ocular evidence has to be believed since nothing worth has been culled out by the defendant to dislodge her testimony. Unless the defendant had caused interference, the plaintiff perhaps would not have

come to Court of law. So therefore I hold that the plaintiff has proved the interference also.

11. Plaintiff being the owner of the suit property has got right to enjoy it. Nobody should curtail such a right in any manner. But the defendant has infringed her right having interfered with possession over the suit property. Under such circumstances, to protect her possession Court has to come to her aid by granting equitable relief of injunction. If not, she will be put to hardship and irreparable loss and injury, which cannot be compensated in terms of money, will be caused to her. Hence, she is entitled for the relief of injunction. For all these reasons, I answer point No.1 to 3 in the Affirmative.
12. **Point No.4;** In the result, I am inclined to decree the suit without cost, and proceed to pass the following;

ORDER

This suit of the plaintiff is decreed.

The defendant or anybody claiming under him is restrained permanently from interfering in any manner with the possession of plaintiff over the suit property.

In the circumstances of the case no order as to cost.

Draw decree accordingly.

(Directly dictated to the stenographer, typed by him, corrected by me, signed, then pronounced in the open court on this the 10th day of March- 2016)

(N. Subramanya)

I Addl. Civil Judge & JMFC,
Kalaburagi

A N N E X U R E

List of witnesses examined on behalf of plaintiff/s:

P.W.1: Smt. Laxmibai

List of Exbtd. documents marked on behalf of plaintiff/s :

Ex.P-1: Original Sale Deed

Ex.P-2: Mutation Order

Ex.P-3: Khata Extract

Ex.P-4: Tax paid receipt

Ex.P-5: Tax paid receipt

Ex.P-6: Copy of Form No.1 (Property Tax Return)

Ex.P-7: Khata Extract

Ex.P-8 and 9: Encumbrance Certificates

List of witnesses examined on behalf of defendant/s:

- - Nil.- -

List of Exbtd. documents marked on behalf of defendant/s :

- -Nil.- -

(N. Subramanya)

I Addl. Civil Judge & JMFC,
Kalaburagi

Judgment pronounced in open Court

O R D E R

This suit of the plaintiff is decreed.

The defendant or anybody claiming under him is restrained permanently from interfering in any manner with the possession of plaintiff over the suit property.

In the circumstances of the case no order as to cost.

Draw decree accordingly.

I Addl. Civil Judge & JMFC,
Kalaburagi