



IN THE COURT OF THE ADDL CIVIL JUDGE AND JMFC.,

SHAHAPUR

PRESENT

SRI. BASAVARAJ BSW., LL.M

Addl Civil Judge and JMFC,
Shahapur

Date of Judgment : 05th day of November 2024

O.S No.10/2022

Plaintiff/s

1. Smt Ningamma W/o Late Parayya
Age: 55 years, Occ: Agriculture
2. Shivayyaswamy S/o Late Parayya
Age: 31 years, Occ: Agriculture
3. Anandayyaswamy S/o Late Parayya
Age: 24 years Occ: Agriculture
All are /ro. Khadarapura village
Tq: Wadgera Dist.Yadgir

(By Sri. H.K.V., Advocate)

Versus

Defendant/s

1. Bheemappa S/o Hanumantha
Age: Major, Occ: Agriculture
R/o Khadarapur village, Tq: Wadgera Dist.Yadgir

(Exparte)

1	Date of Institution of suit	07.01.2022
2	Nature of suit	Perpetual Injunction & Mandatory Injunction



3	Commencement of Evidence	17.09.2022		
4	Date of Judgment	05.11.2024		
5	Total duration	Years	Months	Days
		02	09	29

JUDGMENT

This is the suit of plaintiffs for perpetual injunction and mandatory injunction with a prayer to restrain the defendant from interfering in the peaceful possession and enjoyment of the plaintiff over the suit property and direct the defendant to dismantle the illegal construction to the extent of 40 X 60 ft & 30 X 40 ft in the suit land.

2. **The brief case of the plaintiff's case is as under:**

Plaintiffs are the joint owners and possessors of suit land Sy No.104 measuring 16 acres 36 guntas of village Khadarapur village, Tq: Wadgera, Dist."Yadgir, after demise of the husband of plaintiff by name Parayya, the plaintiffs migrated from home village for survival leaving behind the land and started to reside at Shivamogga i.e. daughter's house, recently came to their village and came to know that, the



defendant has illegally constructed a house measuring 40 X 60 feet in the said agricultural land, therefore the plaintiffs approached the concerned police station, but they told that the dispute is Civil in nature and directed the plaintiffs to approach the court, therefore the plaintiffs have filed the present suit.

3. Suit summons was issued to the defendant. In spite of service of summons, defendant remained absent and placed Ex parte.

4. In order to prove the case of plaintiffs, plaintiff No.2 himself got examined as PW-1 and marked the documents as per Ex.P1 to 35.

5. On the pleadings of both the parties, following points arise for my consideration.

POINTS

1. Whether the plaintiffs prove that they are in possession of the suit property as on the date of suit?



2. Whether the plaintiff further proves the alleged construction and interference by the defendant in the suit property?
3. Whether plaintiff is entitled to the relief sought for?
4. What order or decree?
6. Heard the arguments of plaintiff's counsel.
7. My findings to the above points are as under:

Point No.1: Affirmative,
Point No.2: Affirmative,
Point No.3: Affirmative,
Point No.4: As per Final order.

REASONS

8. **Points No.1 to 3:-** These Points are inter-connected with each other and they are taken together for common discussion to avoid repetition of facts.

9. It is the case of plaintiffs that, plaintiffs are the joint owners and possessors of suit land Sy No.104 measuring 16 acres 36 guntas of village Khadarapur village, Tq: Wadgera,



Dist.”Yadgir, after demise of the husband of plaintiff No.1 by name Parayya, the plaintiffs migrated from home village for survival leaving behind the land and started to reside at Shivamogga i.e. daughter’s house, recently came to their village and came to know that, the defendant has illegally constructed a house measuring 40 X 60 feet in the said agricultural land, therefore the plaintiffs approached the concerned police station, but they told that the dispute is Civil in nature and directed the plaintiffs to approach the court, therefore the plaintiffs have filed the present suit.

10. In order to establish the above said facts, plaintiff No.2 got examined himself as PW1 and got marked the as many as 35 documents at Ex.P1 to 35. The PW-1 has reiterated the plaint averments in his chief examination. Ex.P1 is the ROR of suit land Sy No.104 measuring 16 acres 10 guntas standing in the name of plaintiff No.1 for the year 2021-22, Ex.P2 is the ROR of land Sy No.104 standing in the name of husband of plaintiff No.1 Parayya, Ex.P3 is the ROR of land Sy No.104



jointly standing in the name of plaintiffs No.2 & 3, Ex.P4 is the Mutation bearing MR No.H2 for having mutated the suit land in the name of plaintiffs from the name of Parayya, Ex.P5 & 6 are the RORs of suit land standing in the name of husband of plaintiff No.1 from 1978-79 to 1987-88, Ex.P7 is acknowledgment issued by Tahasil office, Wadgera for non availability of RORs of suit land Sy No.104 from 1988 to 1992, Ex.P8 & 8 are the RORs of land Sy No.104 standing in the name of husband of plaintiff No.1 from 1993-94 to 2000-01, Ex.P10 is mutation extract in respect of above said land in the name of husband of plaintiff No.1 by name Parayya, Ex.P11 to 23 are the RORs of land Sy No.104 from 2001-02 to 2013-14 standing in the name of husband of plaintiff No.1, Ex.P24 to 34 are the RORs of land Sy No.104 jointly standing in the name of plaintiffs from 2014-15 till 2022-23, Ex.P35 is the certificate issued by PDO, Gram Panchayat, Wadgera for non availability of property in the name of defendant in land Sy No.104.



11. I have perused the oral and documentary evidence led by the plaintiffs, the plaintiff specifically averred that, they are in actual possession of the land Sy No.104 wherein the defendant illegally has got constructed a construction measuring 30 X 40 feet in the said land. I have perused the documentary evidence led by the plaintiffs at Ex.P1 to 34 which reveals that, the plaintiffs are the owners and possessors of land Sy No.104. On the other hand, the defendant neither appeared nor denied the alleged construction in the land belongs to the plaintiffs. Further the oral evidence of PW-1 can be looked into. The oral evidence of PW-1 remained unchallenged and unrebutted. Further, this court is of the opinion that, non appearance of defendant, an adverse inference can be against him as per Sec.114 (g) of Indian Evidence Act. In this regard, this court relied upon the decision of the Hon'ble Apex court in case of *Vidhyadhar v. Manikrao*, reported in (1999) 3 SCC 573 para No 17. In para No.17, the Hon'ble Supreme court has held as under:



17. Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct. Similarly, a Division Bench of the Punjab and Haryana High Court in *Bhagwan Dass v. Bhishan Chand* [AIR 1974 P&H 7] drew a presumption under Section 114 of the Evidence Act, 1872 against a party who did not enter the witness-box.

12. Since there are no any documents against the oral and documentary evidence of plaintiffs, simply the oral and documentary evidence cannot be denied or over looked. Hence, this court is of opinion that, on the documents available on record and on the facts and circumstances of the case and the decision of Hon'ble Apex Court referred supra, plaintiffs have established that, they are in possession of the suit property as on the date of filing the suit and the defendant is interfering into the peaceful possession and enjoyment of the plaintiff over their land and illegally got constructed the house in the said land for which reason plaintiffs are entitled for the relief sought for. In view of the above discussion I answer points No.1 to 3 in the ***Affirmative***.



13. **Point No.4:** In view of the reasons discussed above on points No.1 to 3, I proceed to pass the following.

ORDER

Suit of the plaintiffs is hereby decreed with costs.

The defendant is permanently restrained from interfering in the peaceful possession and enjoyment of the plaintiff over land bearing Sy No.104 measuring 16 acres 36 guntas situated at Khadarapur village, Hobli : Wadigera, Tq: Wadigera Dist Yadgir.

The defendant is directed to dismantle illegally structure constructed measuring 30 X 40 feet in the land bearing Sy No.104 measuring 16 acres 36 guntas of village Khadarapur village Tq: Wadigera, Dist.Yadgir within one month from the date of this judgment.

Office to draw decree accordingly.

(Dictated to the stenographer directly on the computer, typed by him and corrected by me and then pronounced in the open court on this the 05th day of November 2024).

**(BASAVARAJ)
Addl Civil Judge and J.M.F.C,
Shahapur.**



ANNEXURE

LIST OF WITNESSES FOR PLAINTIFF

PW-1 : Shivayyasamy S/o Late Parayya

LIST OF DOCUMENTS ON BEHALF OF PLAINTIFF

Ex.P1 - 3 : RORs

Ex.P4 : Mutation extract

Ex.P5 & 6 : RORs

Ex.P7 : Acknowledgment

Ex.P8 & 9 : RORs

Ex.P10 : Mutation

Ex.P11 to 34 : RORs

Ex.P35 : Attested certificate

LIST OF WITNESSES FOR OF DEFENDANT

NIL

LIST OF DOCUMENTS ON BEHALF OF DEFENDANT

NIL

(BASAVARAJ)
Addl Civil Judge and J.M.F.C,
Shahapur.