

IN THE COURT OF THE SENIOR CIVIL JUDGE
AT SHAHAPUR

Present: Shri Prabhu. N. Badiger.
B.A., LL.B. (Spl.)
Senior Civil Judge, Shahapur

DATED THIS THE 30TH DAY OF MAY, 2018

R.A.No.14/2017

APPELLANT:

Shankarappa S/o Dod Bhimaraya Mulikeri,
age:44years, occ:Agriculture, R/o
Hanchanal, Tq:Shahapur, Dist.Yadgiri.

(By Sri.H.S.M. Adv.,)

//Versus//

RESPONDENTS:-

1. The State of Karnataka by the Deputy Commissioner at Yadgir.
2. The Revenue Inspector Hayyal(B), Revenue Circle Hayal, Tq.Shahapur, Dist:Yadgiri.
3. The village Accountant, Hayal(B), Tq.Shahapur, Dist.Yadgiri.

(Respt. No.1 to 3 AGP)

Date of registration of the appeal : 28.3.2017

Nature of the Appeal : Against the Judgment and
Decree passed by the
Addl.C.J.Shahapur in
O.S.No.01/2013, Dt.24.03.2016.

Date of Judgment : 30.5.2018

Duration : Year/s Month/s Day/s
-01- -02- -2-

JUDGMENT

The present appeal filed by the Appellants/plaintiffs being aggrieved by the Judgement and decree passed by the learned Civil Judge and JMFC Shahapur in O.S.No.292/2012 dated: 17.04.2015.

2. In order to better and easy understand I have referred the parties in this appeal as referred in O.S.No.210/2010.

The plaintiffs/Appellants filed O.S.No.292/2012 against the defendants/Respondents for seeking the relief of permanent injunction restraining the defendants or servants or agents etc. from interfering into the peaceful possession over the suit properties bearing Sy.No.8, 55/1 measuring 22 acres 13 guntas of Doranahalli village, Tq.Shahapur.

4. The brief facts of the plaintiff's case are as follows:

The plaintiffs have contended that the defendants are the Govt. servants. The plaintiffs are jointly cultivating the suit land since 35 years. The suit land is Khareeg khata Government. The plaintiffs and their family members are jointly cultivating the suit land till today by keeping agricultural implements, fodder and also tying their cattle in the suit land. The defendant No.2 admitted this fact through notice which was issued to the plaintiffs for delivering the possession of the suit land. The defendant No.2 in his notice falsely contended that the suit land was granted to one Siddappa and Sharanappa under "Akram & Sakram Scheme". But the suit land is not at all granted to Siddappa and Sharanappa. The plaintiff has approached the defendant No.2 to explain about the real fact. The suit property boundaries and the property allotted to Siddappa boundaries are different. The plaintiffs are also applied to grant the suit property under "Akram & Sakram Scheme". As they have been 35 years in possession over the suit land. In spite of that the defendants trying to illegally dispossess the plaintiffs from the suit land. Hence they constrained to file the suit.

5. After institution of the suit, the defendant No.2 appeared. The defendant No.2 filed written statement by denying the plaint averments, but he has contended that Govt has granted land to Siddappa S/o Mareppa and Sharanappa s/o Marewwa on 19.03.1991 and also issued 'Saguvali chiti'. Plaintiffs illegally put up the huts over Sy.No.1855/1 measuring 22 acres 13 guntas. Prays to dismiss the suit.

6. On perusal of the above said pleadings the trial Court has framed the following issues for consideration:

:: ISSUES ::

1. Whether the plaintiffs proves that they are in settled possession of the suit property as on the date of suit?
2. Whether the plaintiffs further proves that the alleged interference by the defendants?
3. Whether the plaintiffs are entitled to the relief of injunction as prayed for?

7. In order to prove the above said issues, the plaintiff No.10 has examined as P.W.. In support of his evidence, he has produced Ex.P.1 to P.14. In support of his evidence he has

examined Shankar S/o Bhajju Rathod, Devaraj S/o Gemu Rathod as P.W.2 and 3.

8. The defendants not at all adduced and produced oral and documentry evidence.

9. After hearing the arguments of both Advocates by the trial Court answered issue No.1 in the Affirmative , issue No.2 and 3 in the negative and finally dismissed the suit.

12.. The plaintiffs being aggrieved by the Judgment and decree of the trial Court, they have preferred this Appeal on the following grounds:

GROUND OF APPEAL:

1. The Judgement and decree passed by the lower court is erroneous and against the law.
2. The lower court has not framed proper issues. The lower court has not considered the case of the appellants and admitted facts of the respondents in the written statement.

3. The findings given by the lower Court on issue No.2 to 4 are not correct. The lower Court has answered issue No.1 in favour of the appellants, in spite of that dismiss the suit. The question of dismissing the suit does not arise.
4. The apprehension of the appellants itself is enough to prove the interference. The notice issued by the defendant No.2 trying to illegally dispossess the appellants from the suit property itself is a apprehension and interference. Hence prays to se aside the Judgement and decree of the trial Court and decree the suit.

13. On perusal of the above said facts and circumstances, oral and documentary evidence and argument canvassed at the time of appeal and the decision relied by the learned Advocate for the appellants reported in;ILR 1999 Kar.301. I have framed the following points for my consideration:

POINTS

- 1. Whether the trial court has erred in passing the judgement and decree?**
- 2. Whether the trial court not property considered the oral and documentary evidence and admission of the defendant made in the written statement?**

3. Whether the impugned Judgment and Decree warrants the interference of this Court?

4. What order?

14. I have secured the L.C.R and heard the arguments of appellant's counsel Sri.SVK Advocate on merits and pass the judgment.

15. On appreciation of the evidence adduced by the plaintiffs and the facts and circumstances of the case I answered the said points as follows:

POINT No.1: In the Affirmative,

POINT No.2: In the Affirmative,

POINT NO.3: In the Affirmative

POINT No.4: As per the final order,

For the following:

REASONS

16. **POINTS No.1 to 3**: These three issues are inter linked with each other, in order to avoid repition of facts and disussion, I have taken these points together for common discussion.

17. It is the specific case of the plaintiffs that the defendant No.2 issued notice to handover the possession of the suit property. But this fact is clearly established by the plaintiffs. On perusal of the written statement para no.4 last 3 line which reveals as follows:

“ ಸದರಿ ಜಮೀನು ಸರ್ಕಾರಿ ಖರೀಜಾ ಖಾತಾ (ಪಡಾ) ಜಮೀನು ಇದ್ದು ಅದರಲ್ಲಿ ವಾದಿಯರು ಅನಧಿಕೃತವಾಗಿ ಗುಡಿಸಲು ತೆರವುಗೊಳಿಸಲು ನೋಟೀಸು ಜಾರಿ ಗೊಳಿಸಿದ್ದು ಸದರಿ ಜಮೀನು ಅಕ್ರಮ-ಸಕ್ರಮ ಯೋಜನೆಚುಡಿಯಲ್ಲಿ ಯಾರಿಗೂ ಮಂಜೂರು ಆಗಿರುವುದಿಲ್ಲ “ When the defendant admitted the possession of the suit property. The defendant admitted the issuance of notice to the plaintiffs to handover the possession, so this is itself goes to show that the plaintiff proved the interference of the defendants. But this fact is ignored by the lower court while evaluating or assessing the evidence of the parties as well as answering issue No.2 about the interference. When there is apprehension to the plaintiffs by the hands of the defendants. It is the duty of the Court to protect the possession of the property. But in this case till today the defendants have not at all taken any legal steps against the plaintiffs to dispossess or get back the possession from the plaintiffs hands of the suit property. The defendants have no right to illegally dispossess the plaintiffs from the suit land. They have

right to dispossess the plaintiffs by way of due course of law. The approach of the lower court in its Judgement of para no.9 page No.9 “ಪ್ರತಿವಾದಿಗಳು ದಾವಾ ಆಸ್ತಿಯಲ್ಲಿ ವಾದಿಗಳ ಸ್ವಾಧೀನತೆಗೆ ಹಸ್ತಕ್ಷೇಪ ಮಾಡಲು ಪ್ರಯತ್ನಿಸುತ್ತಿದ್ದಾರೆ ಎಂದು ಹೇಳಿಲ್ಲ ಅಲ್ಲದೆ ತಾವು ಸ್ವಾಧೀನತೆಯಲ್ಲಿರುವುದರಿಂದ ತಮ್ಮನ್ನು ಯುಕ್ತ ಕಾನೂನು ಮೂಲಕ ಅಲ್ಲದೆ ಬೇರೆ ರೀತಿಯಿಂದ ಹೊರಹಾಕಬಾರದೆಂದು ಯಾವುದೇ ಪರಿಹಾರವನ್ನು ಕೋರಿಲ್ಲ. ಕಾರಣ ಪ್ರತಿವಾದಿಗಳು ವಾದಿಗಳ ಸ್ವಾಧೀನತೆಗೆ ಹಸ್ತಕ್ಷೇಪ ಮಾಡಲು ಪ್ರಯತ್ನಿರುವ ಕುರಿತು ವಾದಪತ್ರದಲ್ಲಿ ಯಾವುದೇ ಆರೋಪಗಳಿಲ್ಲ.”

18. The above said approach of the trial Court is against to para 4 of the written statement as stated above. It is need not necessary to specifically mention as stated by the trial Court about the interference just apprehension itself is sufficient to prove the interference. As such the approach of the trial Court about the interference is capricious and perverse.

19. The decision relied by the learned Advocate for the plaintiffs is aptly applicable to the present facts of the case.

20. On the above said reasons, the plaintiffs is in actual possession and plaintiffs established interference by the defendants, what more required to the plaintiffs to get decreed by the hands of the Court. Hence I answered issue No.2 and 3 in the

Affirmative , which is negated by the lower Court. The interference of this court is very essential to reappreciate the evidence of the parties. Hence the Judgement of the lower Court is required to be set aside. Hence I answer points No.1 to 3 in the **Affirmative.**

21. **POINT No.4:** For the reasons and conclusions arrived at points No.1 to 3, I proceed to pass the following:

ORDER

This Appeal filed by the appellants/plaintiffs under Order 41 Rule 1 of Civil Procedure Code is allowed.

The Judgment and Decree passed by the trial Court in O.S.No.292/2012, dated 17.04.2015 is set aside.

The suit of the plaintiffs is decreed.

The defendants are permanently restrained from interfering into the peaceful possession of the suit schedule property without due course of law.

parties shall bear their own cost.

Draw decree accordingly.

Send back L.C.R. to the lower court with the copy
of this judgment.

(Dictated to the Stenographer directly on computer, typed by him,
corrected and then pronounced by me in open court today the 27th Day
of March, 2018)

(PRABHU.N.BADIGER)
SENIOR CIVIL JUDGE
SHAHAPUR,

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