

KABG040001742021



19.07.2025

O.S.No.133/2021

ORDER ON I.A.NO.X

This application is filed U/Sec.66 of Indian Evidence Act (64 of BSA 2023) R/w. Sec.151 of C.P.C., by the counsel for plaintiffs seeking direction to the defendants to produce the original registered sale deed dated 10.04.2003 and gift deed dated 24.06.2013 pertaining to the suit property.

2. In the affidavit annexed to the application, it is stated that the father-in-law of plaintiff No.1(A) i.e., the father of defendants No.2 and 3 and husband of defendant No.1 by name Santram S/o. Mallappa Rudrannavar @ Hatti died on 25.06.2002 at Belagavi. That her husband is the original plaintiff in the suit and he died on 01.11.2021 leaving behind the present plaintiffs as his legal heirs. That after death of her father-in-law, the suit property was

purchased by defendant No.1 by using the pension and other monetary benefits and joint family funds arising out of ancestral and joint family properties. It is further stated that the defendant No.1 purchased the suit property through registered sale deed dated 10.04.2023 and the same is in possession of defendants. That the defendants have also contended that a gift deed has been executed by defendant No.1 in favour of defendants No.2 and 3 through registered gift deed dated 24.06.2013 and the said document is also in the possession and custody of defendants. That the said documents are required to be marked in evidence and they are in custody of defendants and they are required for proper adjudication of the case. That as such the present application needs to be allowed in the interest of justice and equity. On these grounds, the plaintiffs have prayed to allow the application.

3. The defendants have filed their objections contending that the present application is not maintainable since the defendant No.1 has purchased the suit property through registered sale deed from her own income after death of her husband Santram Mallappa Rudrannavar who died

on 25.06.2002. That the contention of plaintiffs that the said property was purchased out of pension and monitory benefits and joint family funds is false. The defendants have further stated that the defendant No.1 is having house property at Mali Galli, Belagavi which is inherited from her parents and by selling the said property, the defendant No.1 has purchased the suit property and hence the question of joint family funds does not arise and the plaintiffs have to prove the same in the course of trial. It is further stated that the defendant No.1 has gifted the suit property to defendants No.2 and 3 who are her daughter and son in the year 2013, but the suit is filed by plaintiffs in the year 2021 and till then the plaintiffs have not challenged the gift deed. That the documents sought by the plaintiffs are public documents and registered before Sub-Registrar, Belagavi which can be easily obtained by the plaintiffs in order to get the same marked in evidence. On these grounds, the defendants have prayed to dismiss the present application with cost.

4. Heard the counsel appearing for plaintiffs and counsel appearing for defendants.

5. The following points arise for my consideration :

- 1) *Whether the plaintiffs have made out grounds to allow this application?*
- 2) *What order?*

6. My answer to above points are as under:

Point No.1 : In the Affirmative,

**Point No.2 : As per final order
for the following :**

REASONS

7. **Point No.1 :** Perused the application, objection and materials available on record. It is pertinent to note that the present suit is filed by plaintiffs seeking the relief of partition and separate possession and consequential relief of declaration that the gift deed dated 24.06.2013 in respect of suit property executed by defendant No.1 in favour of defendant No.3 is null and void and not binding on the share of plaintiffs. Such being the case, the gift deed becomes the suit document. Further the plaintiffs have also averred that the suit property is purchased out of joint family funds and the pensionary benefits received after death of father-in-

law of plaintiff No.1(A) i.e., the father of original plaintiff and as such the plaintiffs also have legitimate share in the suit property. Such being the case, the said sale deed through which the suit property was purchased by defendant No.1 and the said gift deed executed by defendant No.1 in favour of defendant No.3, become the material documents in the suit. No doubt, it is the contention of defendants that the suit property was purchased by defendant No.1 out of her own income and it is her self-acquired property, but the said question cannot be decided at this stage and it can be determined only upon a full fledged trial.

8. The defendants have also raised objection on the ground that the documents sought by plaintiffs to be produced by the defendants are the public documents registered before Sub-Registrar, Belagavi and they can be easily obtained and produced by the plaintiffs. It is not in dispute that the said documents are registered and they are available in public office. But however, for production of secondary evidence in the form of certified copies, the plaintiff has to first explain regarding the primary evidence i.e., the original document and state in whose custody the

original documents are, in order to adduce secondary evidence thereof. As such, in compliance of requirement U/Sec.66 of Indian Evidence Act, i.e., as per Section 64 of Bhartiya Sakshya Adiniyam, the plaintiff is intending to call upon the defendants to produce the said documents from their possession. However, if the defendants fail to produce the same, then the plaintiffs can very well proceed by producing secondary evidence i.e., certified copies of the said documents. As such, it is very much necessary to allow the present application and to direct the defendants to produce the documents stated in the application. Accordingly, I answer **Point No.1 in the Affirmative.**

9. Point No.2 : For the above discussed reasons to Point No.1, I proceed to pass the following :

ORDER

I.A.No.X filed U/Sec.66 of Indian Evidence Act (64 of BSA 2023) R/w. Sec.151 of C.P.C. is hereby allowed.

The defendants are called upon to produce the original registered sale deed dated 10.04.2003 and the gift deed dated 24.06.2013 by next date of hearing.

O.S.No.133/2021

For same by 01.08.2025.

**Prl. Civil Judge & JMFC,
Belagavi.**