

KABG040010632021



ORDERS ON I.A.No.I FILED U/O. XI RULE 14 R/W. SEC. 151 OF CPC

At the stage of evidence, I.A. No.I filed by the plaintiffs with a prayer to direct the defendant to produce the lease deeds executed by plaintiffs in favour of defendant dated 23.11.1983, 08.08.1992, 09.03.1995, 29.09.2005 and 23.01.2009.

2. The plaintiff No.4 has filed affidavit in support of the said I.A wherein he has stated that he has filed the present suit for mandatory injunction. The defendant has filed his written statement and the matter is posted for evidence. Further it is stated that the present suit is filed in respect of leased out suit property wherein many lease deeds were mentioned in the pleadings which were executed by himself and other plaintiffs in favour of defendant. The original sale deeds are in possession of defendant and xerox copies of the same are with the plaintiff and same were produced before the Court. Further it is stated that the original documents lies with the beneficiary, hence all original documents are with the defendants which are necessary to decide the matter in controversy. The original lease deeds are in possession of defendants, hence it is necessary to call for produce the same before this Court. If the application is not allowed, he will be put to greater hardship. On the contrary, no loss or hardship will caused to the defendant, if the application is allowed. Hence, prayed to allow the application.

3. The defendant has opposed the said application by filing objections, wherein he has denied the contents of the application. Further it is contended that the documents i.e lease deed executed by the plaintiffs in his favour may be with him, so he can produce the same before this Court at the time of his examination-in-chief, if found. At that time, the plaintiffs are at liberty to cross-examine the defendant upon the documents. Moreover the xerox copies of those documents are with the plaintiffs. So with subject to condition, xerox copies of lease deed can be marked as Exhibits. The plaintiffs can refer those xerox copies of lease deed in their chief-examination with subject to condition of marking those documents by comparing with the document, when the defendants will produce the original of said documents in his examination-in-chief. Further it is contended that said documents are not necessary at this juncture. Hence, prayed to reject the application.

4. Heard the arguments on both side. Perused the records.

5. On the basis of the above facts, the following points that arise for my consideration are;

1. Whether the plaintiff has made out sufficient grounds to allow the application ?

2. What order ?

6. My answer to the above points is:

Point No.1	:	In the Affirmative;
Point No.2	:	As per the final order, for the following;

REASONS

7. The plaintiffs have filed the present application seeking to direct the defendant to produce the lease deed executed by the plaintiffs in favour of defendant dated 23.11.1983, 08.08.1992, 09.03.1995, 29.09.2005 and

23.01.2009. The plaintiff contend that he has filed the present suit against the defendant seeking mandatory injunction against the defendant directing the defendant to take off their machines from the suit property. The plaintiff contend that the suit property was leased out to the defendant. The lease agreements executed by the plaintiff and defendants. The original lease deeds are in possession of the defendant. The said lease deeds are necessary. Hence, sought for direction to the defendant to produce the said documents. On the other hand, defendants in his objections stated that the lease deeds stated by the plaintiffs in the application may be with him. The defendant can produce the said documents if it is found at the time of his chief-examination. The plaintiff are at liberty to cross-examine the defendant upon the documents of lease deeds executed by the plaintiff in favour of the defendant. The xerox copies are with the plaintiff, they can be mark subject to condition.

8. It is pertinent to note that it is the contention of the plaintiff that the suit property leased to the defendant and lease agreements were got executed between the plaintiff and defendant. Further contended that the plaintiffs is in possession of the suit schedule property. The defendant is the tenant in respect of the suit property. Now, the plaintiff has sought for production of lease deeds detailed in the application.

9. It is pertinent to note that the defendant does not totally denied that he is not in possession of the lease deeds stated by the plaintiff. The defendant contended that he would produce the said document, if it is found at the time of his evidence. Now, it is necessary to refer order 11 Rule 5 of

CPC. Said provision states about production of documents which reads as under:

“(1) Any party to a proceeding may seek or the Court may order, at any time during the pendency of any suit, production by any party or person, of such documents in the possession or power of such party or person, relating to any matter in question in such suit.

(2) Notice to produce such document shall be issued in the Form provided in Form No.7 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908)

(3) Any party or person to whom such notice to produce is issued shall be given not less than seven days and not more than fifteen days to produce such document or to answer to their inability to produce such document.

(4) The Court may draw an adverse inference against a party refusing to produce such document after issuance of a notice to produce and where sufficient reasons for such non-production are not given and order costs.”

The above said provision empowers the Court to direct any party or person to produce the document in their possession which is relating to any matter in question either on application by any party or suo moto.

10. In the instant case, the documents which the plaintiff seek direction to the defendant to produce the documents are in possession of the defendant. The defendant does not totally denied the possession of said documents. Admittedly, the said documents are relating to matter in question in the suit. Hence, I am of the opinion that the plaintiff has made out grounds to allow the application. Hence, I answer the point No.1 in the **Affirmative**.

11. **Point No.2:-** For the above discussion, I proceed to pass the following;

ORDER

IA.No.I filed by the plaintiff U/O.XI Rule 14 r/w. Section 151 of CPC is hereby allowed.

The defendant is hereby directed to produce the original lease deeds dated 23.11.1983, 08.08.1992, 09.03.1995, 29.09.2005 and 23.01.2009.

call on by

IV Addl. Civil Judge & JMFC.,
Belagavi.