



IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE, GOKAK

Present: K.M. SHANKAR, B.A.L., LL.B.,
I Addl. Senior Civil Judge, Gokak

Dated, this the 04th day of January, 2023

O.S.No.290/2012

Plaintiff: Konappa @ Anand S/o. Irappa Ankadavar,

(By Sri.RSK., Advocate)

V/s

Defendants: 1. Irappa S/o. Konappa Ankadavar
and others

(D1 & 11 to 14 By Sri.NSG., Advocate)
(D2 to 5, 2(a to e) & 3(b) exparte)
(D15 to 17 By Sri.BKJ., Advocate)
(D18 By Sri.SBM., Advocate)
(D10 By Sri.SCG., Advocate)
(D3(a & c), 7 to 9 & 19
by Sri. LMS., Advocate)

I.A. No.51

Applicant : Suresh

V/s

Opponent : Anand

ORDERS ON IA-51 FILED UNDER ORDER 18 RULE 17 OF CPC

The 4th defendant has made the instant application
seeking recalling of the DW2 for further cross-examination on

the grounds that after closure of the cross-examination of the DW2, he sold the suit item No.18 and other two properties, which are not the suit properties infavour of the defendants 8 and 9 through a registered sale deed on 13.10.2020. He sold the said properties because he was heavily indebted to bank and the banking authorities took the mortgaged property for auction. That, by filing written statement the 10th defendant and plaintiff are claiming that the suit properties are joint family properties and the conduct of the plaintiff as well as 10th defendant shows that the properties are independent properties. During pendency of the suit the 3rd defendant died. Thus, relating to subsequent events, the counsel of the 4th defendant wants to ask some questions. Hence, recalling of the DW2 is very much essential. Otherwise, the 10th defendant may raise a question about all these things in his arguments.

2. This application is resisted by the 10th defendant contending that it is groundless and the averments made therein are false. The application is filed only with an intention to drag on the matter in dispute for long time. If the defendants 4 and 19 want to say anything in relation to any subsequent events regarding developments if any they may examine



themselves before the court and can prove their case. The defendants 4 and 19 cannot cause harassment to the 10th defendant by filing the false application. The defendants 4 and 19 cannot prove their case by cross-examining the DW2. They must stand on their own legs and they can prove their case by giving oral or documentary evidence in their support. It is false to say that the 10th defendant obliged to sell the property involved in the sale deed dated 13.10.2020 and he agreed to sell the suit properties for a sum of Rs.2,20,00,000/-.

3. It is contended that the suit OS.No.314/2022 on the file of this court is pending between the 10th defendant and defendants 7 to 9 regarding the alleged sale deed under the provisions of law i.e., Section 26 of the Specific Relief Act. The same advocate Shri. L.M. Sharegar has filed the above stated suit before this court. In the said suit the 10th defendant filed his written statement and it is set down for issues. The matter in dispute will have to be decided after the trial on merits. The defendants 4 and 19 are supporting the defendants 7 and 8. Hence, they have filed this false application to get some admission in their favour from the 10th defendant, so as to affect the trial of the suit OS.No.314/2022, which is yet to be decided



independently by the court. The said suit is for execution of correction of sale deed. The defendants 4 and 19 in the present suit purposely suppressed these material facts with bad intention to mislead the court and to get admission by cross-examining the DW2 in the latest suit and have filed this false application with ulterior motive to gulp the entire suit properties.

4. During pendency of this suit, the defendant No.2(a) to (c) have filed another suit OS.No.417/2022 before the Prl. Senior Civil judge, Gokak for the relief of partition in respect of the same suit properties through the same advocate Shri. L.M. Sheregar. In the said suit, the 10th defendant has filed an application Under Order 1 Rule 10(2) R/W Section 151 of CPC to implead him as a party and thereafter the said suit OS.No.417/2022 was withdrawn by the above said defendant No.2(a) to (c) as second suit is not maintainable in the law. Therefore, the conduct of the defendants 4 and 19 and defendants 2(a) to (c) clearly shows that they are colluding with each other and wants to harass the 10th defendant by filing this type of false application. The defendants 4 and 19 cannot compel the 10th defendant to give evidence before the court under the provision of law.



5. The suit is for the relief of partition in respect of the suit properties. The defendants 2(a) to (c), 3 to 5, 7 to 9, 4 and 19 represented by Shri. L.M. Sheregar Advocate have falsely contended that the suit properties are their self acquired properties. Plaintiff case is that the suit properties are the Hindu joint family properties and he claim partition of the properties. These defendants will have to prove their case by evidence. The 10th defendant is also contended that some properties are self acquired properties and some properties are the Hindu joint family properties, accordingly he has already produced documents and given oral evidence but in the oral evidence he has not stated any thing against the above stated defendants. Hence, the question of cross-examination of the other defendants will not arise. However, the advocate on behalf of the defendants 2(a) to (c), 3 to 5, 7 to 9 and 4 and 19 cross-examined in detail. Accordingly, it is prayed for dismissal of the application with cost.

6. I have heard the arguments of the learned counsel appearing for the defendants 4, 10 and 19 and perused the material on record.



7. Points that arise for consideration of the court are;

1. Whether the 4th defendant has made out grounds to allow the present application?

2. What Order?

8. Findings of the court on the above points are as under:

Point No.1: in affirmative and

Point No.2: as per final order for the following:

R E A S O N S

9. Point No.1: as could be seen from the statement of objections of the 10th defendant, he has filed a lengthy objections and narrated about so many things. The present application is filed seeking permission to cross-examine the DW2 as after closure of his cross-examination, he sold out the suit property item No.18 and other two properties, which are not the suit properties infavour of the defendants 8 and 9 through a registered sale deed on 13.10.2020. This fact is not denied by the 10th defendant. That apart, in his written statement and evidence he has not denied the entire case of the plaintiff. Whereas, the 4th defendant has denied the entire case of the plaintiff and has taken up a specific defense contrary to the case of the plaintiff.

10. Further, it is contended by the 10th defendant in his objections that he has not stated anything in his examination-in-chief against the 4th defendant. Hence, the question of further cross-examination of the DW2 by the 4th defendant does not arise. But, as noted hereinabove, and as could be seen from the cross-examination of the DW2, the counsel of the 4th defendant cross-examined him at length and it was not objected by him. That apart, as could be seen from the written statement and evidence of the DW2, he has not admitted the case of the 4th defendant.

11. Further, it is contended by the 10th defendant that the 4th defendant has to prove his case by examining himself and producing documentary evidence and he cannot compel the 10th defendant to prove his case. But, this objection is not relevant to decide this application because the 4th defendant is not compelling the 10th defendant to prove the case of the 4th defendant. Rest of the objections raised by the 10th defendant are highly irrelevant to decide the application at hand and their reiteration herein is only waste of the time of the court. Therefore, they are overruled. Moreover, if the application is allowed no hardship or injury will be caused to the 10th defendant and it will



be helpful to the parties in deciding the real controversy between the parties. In the circumstances, the application needs to be allowed by imposing cost. Accordingly, the point No.1 is answered in the affirmative.

12. Point No.2: in view of the findings arrived on the point No.1, I proceed to pass the following:

O R D E R

The IA-51 filed Under Order 18 Rule 17 of CPC, is hereby allowed on cost of Rs.200/-.

(Dictated to the stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 04th day of January, 2023)

(K.M.SHANKAR)
I Addl. Senior Civil Judge, Gokak