

KABG500009172022



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

The defendants have filed this present application U/o XI Rule 14 R/W Sec.151 CPC at I.As.V praying to direct the plaintiff to produce the original oppige patra executed by the defendants No.1 and 2 infavour of the plaintiff on 29.06.2020.

2. In the accompanying affidavit, the defendant No.1 contended that the plaintiff has led their evidence as PW1. Now the case is posted for cross-examination of PW1 but the plaintiff in his evidence intentionally not produced the original consent deed executed by himself and defendant No.2 infavour of the plaintiff on 29.06.2020. The said original consent deed is important document in order to prove their defense and in the cross-examination of PW1, when their counsel put the question with regard to the execution of the

consent deed, the PW1 has denied the same. Therefore, it is just and necessary to direct the plaintiff to produce the original consent deed executed by the defendants No.1 and 2 infavour of the plaintiff on 29.06.2020. Hence, prayed to allow the application.

3. The plaintiff filed objections to the application by denying entire contentions of the defendants. Further the plaintiff denied the execution of the alleged consent deed dated 29.06.2023 by the defendants No.1 and 2 in his favour and further contended that no transaction was took place on 29.06.2023 and no consent deed was executed by them and he is not having the original consent deed which is the plaintiff is alleging. The defendants are falsely alleging that the original consent deed is with him as such, the plaintiff contended that if there is no any consent deed as alleged by the defendants and he is not at all in possession of the said alleged consent deed.

Hence, producing the said document does not arise at all.

Hence, prayed to reject the application.

4. Heard both side. Perused the application and records.

5. The points that arise for my consideration are;

1. Whether defendants No.1 has made out grounds to direct the plaintiff to produce the alleged original consent deed dated 29.06.2020?

2. What order?

6. My findings on the above points are:

POINT No.1: In the Affirmative

POINT No.2: As per final order

for the following;

REASONS

7. **POINT No.1:** This present suit is filed by the plaintiff seeking the relief of specific performance of contract against

the defendants based on the alleged agreement of sale dated 06.05.2019 in respect of the suit properties. The defendants in their written statement, they have specifically contended that they have executed the agreement of sale as a security till execution of agreement of sale in respect of the suit properties bearing R.S.No.121/1,121/2, 122/1 and 122/2 of Mannikeri village. Further in the cross-examination of the PW1, it was contended by the defendants that apart from this alleged agreement of sale there was another transaction was took place in between them but the PW14 has denied the same. The PW1 further denied that apart from this agreement of sale there was a one consent deed got executed in between them but he stated that apart from this agreement of sale no other transactions were took place in between them. Further, he also denied that the said consent deed was executed in respect of R.S.No.121/1,121/2, 122/1 and 122/2 of Mannikeri village in the presence of Tammanna Dasanal, Ravi Uppar, P.M.Rumani

and he also denied that the said document was executed before notary.

8. By perusing the records it goes to shows that the plaintiff is totally denying the execution of the alleged consent deed dated 29.06.2020. The defendants along with application filed a memo with zerox copy of the alleged consent deed dated 29.06.2020. By perusing the recitals of the said document, it goes to shows that one consent deed was got executed in between defendants and plaintiff in respect of R.S.No.121/1,121/2, 122/1 and 122/2 of Mannikeri village. By perusing the zerox copy of the consent deed, it prima facie goes to shows that one consent deed executed in between plaintiff and defendants on 29.06.2020 but the plaintiff was not produce the same.

9. It is the specific contention of the defendants that they have executed the alleged agreement of sale dated 06.05.2019

as a security for execution of the agreement of sale in respect of R.S.No.121/1,121/2, 122/1 and 122/2 of Mannikeri village. It prima facie goes to show that apart from this present agreement of sale dated 06.05.2019, there was another transaction which took place between plaintiff and defendants on 29.06.2020. Further it appears that the xerox is with the defendants and the original copy of the said document is with the plaintiff.

10. As per the provisions of the XI Rule 14 of CPC, It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just. By perusing the above said provision, it is clear that it is open to the court to compel production of documents at any time of the

pendency of the suit. The power of the court under this rule is a discretionary and for exercising the discretionary power two conditions are required to be fulfilled namely, the documents, the production of which is sought for, must be in possession or power of the party against whom the directions and that the documents must related to the controversy involved in the suit.

11. In this present case on hand, the defendants have produced the zerox copy of the alleged consent deed and by perusing the said zerox copy it appears that the said consent deed was executed in between plaintiff and defendants and the original document is in the possession of the plaintiff and the said document relates to the controversy which has been arose in between the parties and production of the document is just and necessary for resolving the controversy arose in between the parties. But the plaintiff has denied the alleged execution of the consent deed dated 29.06.2020 but by perusing the zerox copy of the said document it goes to shows

that the plaintiff is in possession of the alleged consent deed dated 29.06.2020 and alleged said document is just and necessary for deciding the case. Under such circumstances, I am of the considered view that it is just and necessary to direct the plaintiff to produce the original consent deed dated 29.06.2020. Hence, I answered the **Point No.1 in the Affirmative.**

12. **POINT No.2:** For the aforesaid findings, I proceed to pass the following:

ORDER

The application filed by the defendants U/o XI Rule 14, R/W Sec.151 of CPC at I.A.No.V is hereby allowed.

The plaintiff is directed to produce the original consent deed dated 29.06.2020.

Call on for compliance by 04/11/2024.

Sd/-

Prl. Sr.C.J.Gokak.