

KABG600004892014



**IN THE COURT OF SENIOR CIVIL JUDGE, HUKKERI,
ITINERARY COURT AT SANKESHWAR.**

*Before: Sri K.S.Rotter, B.Com. LL.B (Spl),
Senior Civil Judge, Hukkeri,
Itinerary Court at Sankeshwar.*

Dated this 24th day of June 2022

O S No.88/2014

Plaintiffs: Shri Vishnu Yallappa Patil and another
V/s

Defendants: Shri Vasant Dattatrey Gavade and others.

Parties to IAs No.XVII to XIX

Applicant/Plaintiff No.1:

- Shri Vishnu Yallappa Patil,**
Age: 38 years, Occ: Agriculture,
R/o: Modage, Taluk: Hukkeri,
District: Belagavi.

(By Shri R. B. Patil, Advocate)

-Versus-

Opponent/Defendant No.1B:

- Shri Dayanand Vasant Gavade,**
Age: 34 years, Occ: Agriculture,
R/o: Modage, Taluk: Hukkeri,
District: Belagavi and others.

(By Shri R.V. Joshi, Advocate)

Orders on IAs No.17 to 19 filed U/s 151, U/o 18 R.17 and U/o 7 R.14 of CPC.

The plaintiff No.1 has filed IA No.XVII under Section 151 of Civil Procedure Code, for reopening the case for the purpose of further evidence of plaintiff.

2. Further, the plaintiff No.1 has filed IA No.XVIII under Order XVIII Rule 17 R/w Section 151 of Civil Procedure Code, for recall of PW.1 for the purpose of further chief -examination.
3. Further, the plaintiff No.1 has filed IA No.XIX under Order VII Rule 14(A) R/w Section 151 of Civil Procedure Code, for production of documents which are produced along the present applications.
4. All the above applications supported by the sworn affidavits of the plaintiff No.1 stating that, they have filed this suit for the relief of partition and separate possession against the defendants and he has already examined himself as PW1 by producing relevant documents of the suit properties. Further, the plaintiff No.1 stated that, in the year 2005 in Shri Vitthal Mandir Modage village, compromise talks were held between Dhondubai Dattatrey Gavade and Tulasabai

Maruti Gavade @ Keloji with the intervention of Shankarao Bhanduge and Vishnu Redekar and others in respect of the suit properties. At the time compromise negotiations, documents were prepared and duly signed by the parties and pancha witnesses on 08.11.2005. Further, even during the pendency of the suit on 24.06.2019 again compromise talks were held between them and documents also prepared and duly signed by the parties. However, the defendants failed to comply the compromise talks held on 08.11.2005, as such he has filed this suit for partition and recently, he has traced out the original documents at the time of cleaning his house and the said documents are very necessary for adjudication of the matter in dispute. But now the case is fixed for further cross of DW1. Therefore, the plaintiff No.1 contended that, for production of the above said partition documents it is just and necessary to reopen the case and further evidence of PW.1. If the applications are not allowed, he will be put to great loss and hardship. Hence, he prayed for allowing the above said applications.

5. On the other hand, the defendant No.1B has resisted the above said applications by filing written objections. The defendant No.1B stated that, the applications filed by the plaintiff No.1 are false and

not maintainable under law. Further, the defendant No.1B denied the compromise talks held between the plaintiffs and the defendants as averred in the applications and specifically stated that, the plaintiff No.1 has created the documents and produced before this court. It is stated that, if at all the partition documents taken place on 08.05.2005, there is no impediment for the plaintiff for producing the said documents by mentioning the same in the plaint at the time of filing the suit. Further, it is stated that, the proposed documents are not registered and they are not admissible in law and they have no evidentiary value. Further, the defendant No.1B denied that, during the pendency of this suit, on 24.06.2019, compromise talks were held between the parties and the documents of partition dated 08.11.2005 and 24.06.2019 produced at belated stage and the plaintiff has not explained the said delay. Further, the defendant No.1B stated that, even during the evidence of plaintiff also he has not stated about the said documents. Hence, the defendant No.1B stated that, there are no good grounds and reasons for allowing the applications. Hence, with these among the other grounds, the defendant No.1B prayed for dismissing the IA No.XVII to XIX on costs.

6. All these IAs are interlinked with each other and requires common discussion of facts and evidence, as such, these applications are taken together for consideration.
7. I have heard the arguments.
8. The points that arise for my consideration is;
 1. *Whether it is just and necessary to take the documents on record, which are produced by the plaintiff No.1?*
 2. *Whether the documents i.e. alleged unregistered partition agreement dated 24.06.2019 and consent deed dated 08.11.2005 produced by the plaintiff No.1 are admissible in evidence?*
 3. *Whether the plaintiff No.1 has shown sufficient reasons for reopening the case and for recall of Pw-1?*
 4. *What order?*
9. My findings on the above points are as under :-
 1. In the Affirmative.
 2. Admissible, subject to payment of duty and penalty as per law.
 3. In the Affirmative.
 4. As per final order for the following :-

REASONS

10. **Points No.1 and 3:** This is a suit filed by the plaintiffs for the relief of partition and separate possession against the defendants in

respect of the suit properties. It is seen from the records that, after registering the suit, the defendants appeared and filed their written statement by denying the contentions of the plaintiffs. Thereafter, this court has framed the issues and the plaintiff No.1 has examined himself as PW1 and in support of their contentions also examined 3 witnesses as PW2 to 4 and produced 18 documents and closed their side. The defendants in support of their defence have examined 2 witnesses as DW1 & 2 and now the case is fixed for further cross of DW.2. At this stage, the plaintiff No.1 has filed these applications for re-opening the case and re-call of Pw.1 for the purpose of chief examination and for production of documents. The plaintiff No.1 has come up with these applications stating that, in respect of the present suit properties compromise talks were held between Dhondubai Dattatrey Gavade and Tulasabai Maruti Gavade @ Keloji in presence of the village elders on 08.11.2005 and, even during the pendency of the suit on 24.06.2019 in between plaintiffs and defendants and documents also prepared and duly signed by the parties on the said dated and recently, he has traced out the said original documents at the time of cleaning his house and the said documents are very necessary for adjudication of the matter in dispute. It is stated that, if the applications are allowed, no prejudice

will be caused to the plaintiff. On the other hand, the defendant No.1B in his objection stated that, the documents filed by the plaintiff No.1 are created documents and the applications are false and not maintainable and only to drag on the proceedings said applications are filed. Hence, question of considering the said documents at the stage of arguments does not arise at all.

11. The advocate for the plaintiff No.1 during the course of arguments submitted that, the documents produced by the plaintiffs along with IAs are very important and material evidence for proving their case. Therefore, the advocate for plaintiff contended that, production and marking of proposed documents is very much necessary in this case and if the applications are allowed, no prejudice will be caused to the defendants. On the other hand, the advocate for defendant No.1B argued with force that, the applications filed by the plaintiff No.1 are false and not maintainable. It is contended, now the case is fixed for further cross of DW.2 and the proposed documents are created documents and not necessary for the adjudication of this case. Hence, question of considering the said documents do not arise at all and the plaintiff No.1 has filed these applications only with an intention to drag on the matter at belated stage.

12. I have perused applications, documents and objections and other connected case papers. In the present case on hand, the plaintiff No.1 produced unregistered original consent deed dated 08.11.2005 and partition agreement dated 24.06.2019 along with the applications. On the other hand defendants stated that, the proposed documents are created documents and not necessary for the adjudication of this case. However, it is not appropriate at this stage to decide the validity of the documents produced by the plaintiff No.1. At this stage, a limited question of production of documents has to be considered. Therefore, whether the said documents are relevant and material for the disposal of this suit or not and whether the said documents have no evidentiary value and in inadmissible document? is to be decided after full pledge enquiry. In this case yet evidence is not completed. I have perused the proposed documents produced by the plaintiff No.1 along with these applications are original consent deed and partition agreement. It is true that, the plaintiff No.1 should have been diligent in producing these important documents at the time of filing the plaint but on that, ground the applications cannot be rejected. Since, it would be as good as shutting a heavy important piece of evidence. Hence,

whatever the inconvenience caused to the defendants and delay in getting production of documents can be suitably compensated by imposing proper and reasonable cost. If these IAs are not allowed injustice would be caused to the plaintiff No.1 than the defendants. Anyhow the defendants will have the opportunity to cross-examine the plaintiff No.1 on these documents. Hence, the question of causing prejudice to the defendants does not arise and plaintiff No.1 has shown grounds for reopening the case, recall of Pw-1 for further chief examination and for production of documents. Hence, without much discussion, I answer point No.1 and 3 in affirmative.

13. **Point No.2:** The advocate for the defendant No.1B stated that, consent deed dated 08.11.2005 and partition agreement dated 24.06.2009 produced by the plaintiff No.1 are unregistered and the said documents cannot be marked evidence. I have perused the unregistered partition deed dated 08.11.2005 and partition agreement dated 24.06.2009 produced by the plaintiff No.1, the said documents are unregistered and partition deed dated 08.11.2005 has been written on white paper and partition agreement dated 24.06.2009 is written on Rs.50/- Bond paper and both documents are not properly stamped as per law. Above said documents are not

affixed stamp duty as per but the plaintiff No.1 has relying the said documents by filling these applications but, plaintiff No.1 has to pay the stamp duty as per the Karnataka Stamp Act 1957. Therefore, law prescribed that if the plaintiff No.1 wanted to rely on the above said documents; he shall pay the stamp duty along with penalty of 10 times. Hence, the plaintiff No.1 is liable to pay stamp duty on the above said documents under Article-39 (b) of Karnataka Stamp Act 1957, and it clearly stating that, ***“where the property involved in the partition is agricultural land – Rupees two hundred fifty for each share”***. Without payment of the stamp duty and penalty under Article-39 (b) of Karnataka Stamp Act on the said documents, the said documents cannot be not admissible in evidence. Here in this case, as per alleged partition deed, the agricultural lands are divided in to 2 shares. Therefore, plaintiff No.1 has to pay Rs.500/- stamp duty along with 10 times penalty. Calculating of 10 times, it comes to Rs.5,000/-. Hence, plaintiff No.1 is liable to pay total stamp duty of Rs.500/- Plus penalty of Rs.5,000/- and total Rs.5,500/-. Unless and until the plaintiff No.1 paid the above said stamp duty and penalty on the said documents are not admissible in evidence. Without paying above said stamp duty and penalty as calculated by this court, above documents

cannot be considered in evidence and it is inadmissible. Hence, without much discussion this court comes to the conclusion that, the applications filed by the plaintiff No.1 for reopening the case, recall of Pw-1 and for production of documents deserve to be allowed. Accordingly, I answer points No.2.

14. **Point No.4:** For the forgoing reasons, I pass the following order:

ORDER

The IA No.XVII filed by the plaintiff No.1 under Section 151 of Civil Procedure Code, is hereby allowed on cost of Rs.500/-.Consequently case is re-opened and the plaintiff No.1 is permitted to lead his further evidence as prayed in IA.

IA No.XVIII filed by the plaintiff No.1 under Order XVIII Rule 17 R/w Section 151 of Civil Procedure Code, is hereby allowed on cost of Rs.500/- payable to the defendants and PW.1 is recalled for the purpose of leading his further evidence as prayed in IA.

The IA No.XIX filed by the plaintiff No.1 under Order VII Rule 14(1) R/w Section 151 of Civil Procedure Code, is hereby partly allowed on payment of cost of Rs.500/- to the defendants. Accordingly, the documents which are produced by the plaintiff No.1 are received on record subject to the

proof and relevancy and also subject to payment of stamp duty and penalty on the said documents.

Further acting under Section 33 of Karnataka Stamp Act 1957, the documents i.e. unregistered consent deed dated 08.11.2005 and partition agreement dated 24.06.2009 produced by the plaintiff No.1 are hereby impounded. The said documents are not admissible documents in evidence unless and until the plaintiff No.1 pays the stamp duty under Article-39 (b) of Karnataka Stamp Act.

(Dictated to Stenographer directly on computer in open court, typed by her corrected by me and then pronounced in open court on this 24th day of June 2022.)

-Sd/-

(K. S. Rotter)

Senior Civil Judge, Hukkeri,
Itinerary Court at Sankeshwar.