

ORDER ON IA-12 & 13

1. I.A No.12 is filed by the P.A holder of 2nd defendant seeking an order to permit the 2nd defendant to produce the documents by condoning the delay.
2. I.A No.13 is filed U/o 16 rule 6 of CPC seeking an order to issue summons to Sri.S.B.Chikkamath CPI Jamkhandi to produce the original wills dated 24.03.2008 and continuation of the will dated 20.07.2009 registered on 07.11.2011. The two applicants are supported by affidavits to which the P.A holder of the 2nd defendant has sworn to by. The documents produced are material to prove the case of the 2nd defendant and hence the 2nd defendant be permitted to produce those documents. If the application is allowed no harm would be caused to the other side.
3. It is further contended that the 2nd defendant has claimed suit schedule property by means of counter claim on the basis of bequest under the registered will dated 24.03.2008 executed by Smt. Sushilabai W/o Kalasappa Shinge and registered will dated 20.07.2009 and registered on

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07.10.2011. During the pendency of the suit the first defendant Jayawant Kale has lodged a complaint against the mother of the 2nd defendant alleging the offences punishable U/s 465,467,468, 471, 474, 120(B) R/w section 149 of IPC before this Hon'ble court and the said matter was referred to the CPI Jamkhandi for investigation. The Circle Police Inspector has submitted 'B' challen. Prior to filing of the report the Circle Police Inspector is said to have seized the will on 19.09.2012 from Smt. Rekha W/o Bharat Paranjape. The said will was not thereafter returned to the mother even after filing of the report. It is further contended that the deponent and mother had requested the Circle Police Inspector for returning of the said document, but the documents were not returned and therefore now deponent has sought for issue of summons to the Circle Police Inspector to produce the said original documents. The certified copies of the said bequest are made if the summons is issued to the Circle Police Inspector no prejudice will be caused. Moreover the document is necessary for the 2nd defendant to prove her case.

4. Common objections are filed to these applications

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by defendant No.1 & 4. It is contended that the documents sought for the production under application No.13 are said to be in custody of 2nd defendant herself. However the application is filed only with an intention to dragging the proceedings. The documents produced along with I.A No.12 are in custody of the 2nd defendant however they are produced at the very belated stage. The said documents are not relevant for deciding the real controversy between the parties. In the entirety the applications are now filed by the 2nd defendant are only to drag on the proceedings and accordingly there are no merits in the application and hence applications are sought to be rejected with costs.

5. The following point arises for my consideration ;
 1. *Whether applicant/defendant No.2 has made out grounds to allow I.A No-12 to produce the documents?*
 2. *Whether the defendant No.2/applicant has made grounds to allow I.A No-13 to an order for issuing summons to Circle Police Inspector by name S.B.Chikkamath to*

produce the wills as sought in the application?

3. *What order ?*

6. Heard both the sides. My answer to the above points 1 & 2 are answered in the Affirmative for the following ;

REASONS

7. **Point No.1 & 2.** In so far as the application U/o 8 rule 1(a) is concerned the 2nd defendant has now produced as many as 36 documents that are electricity bills, paper bills, chemical bills, revenue receipts, tax paid receipts etc. On the contrary the defendant No.1 & 4 have contended that documents are irrelevant in so far as the relevancy of the documents is concerned it must be considered at the time of admitting the documents in evidence. It is too premature at this stage as to whether the documents are relevant or irrelevant. The stage is only for production of the documents that are in the custody of the defendant No.2. There is a delay in producing the documents no doubt, but same may be met by imposing costs. In so far as the application for issuance of summons

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to the Circle Police Inspector is concerned it is specifically alleged that, the original wills dated 23.04.2008 and 27.02.2009 are in the custody of Circle Police Inspector. It is further alleged that they were seized from the 2nd defendant during the investigation in criminal case and thereafter even after request made by the 2nd defendant the said documents were not returned. Under such circumstances although the defendants 1 and 4 have contended that when the custody of these documents are with the 2nd defendant, but in the light of the specific allegation of the 2nd defendant that the documents are in the custody of the Circle Police Inspector said to have been seized in the case for the offences punishable U/s 465,467,468,471, 174, 120(B) R/w section 149 of IPC. The 2nd defendant has not furnished the particulars of the crime number registered and therefore on furnishing particulars of the case in which the wills were seized by the Circle Police Inspector, office could be directed to issue subpoena summons to the Circle Police Inspector to produce the documents in his custody. The copies of the documents may have been produced but as

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they would be only secondary evidence, in the absence of primary evidence only certified copies of the will would be admissible. Moreover the 2nd defendant has specifically pleaded regarding the custody of the documents with the witness named in the application. Hence an opportunity must be given as even on the basis of allegation made against the official, the official had no authority to retain the documents if they were seized in the case registered against the accused for the offence punishable under sections enlisted above. Accordingly on costs of Rs.100/- the application U/o 8 rule 1(a) could be allowed and the delay caused could be condoned. Likewise on furnishing the other particulars office is directed to issue sub pena summons in the name of Sri.S.B.Chikkamath Circle Police Inspector, then working at police station Jamkhandi to produce the documents as mentioned in the application. Accordingly point No.1 & 2 are answered in the affirmative.

ORDER

I.A No.12 filed U/o 8 rule 1(a) of CPC is allowed on cost of Rs.100/-.

I.A No.13 filed U/o 16 rule 6 R/w section

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151 of CPC is hereby allowed.

Office is directed to issue sub-pena summons to the Circle Police Inspector by name Sri.S.B.Chikkamath then working at police station Jamkhandi, after furnishing the particulars of crime number in which the said wills have been seized.

(Balachandra.N.Bhat)
Prl. Senior Civil Judge
& JMFC *Jamkhandi.*