

KABK700003372020



O.S./88/2020

IN THE COURT OF ADDL SENIOR CIVIL JUDGE, JAMKHANDI.

Present:

Shri.Rajashekhar.S. Harsoor

B.A. LL.B.,

Addl Senior Civil Judge, Jamkhandi.

O.S No.88/2020

Dated this, the 08th day of December, 2023.

1. Smt. Bourawwa W/o Channayya Math @ Ganachari,
Age : 75 years, Occ : House hold work & Agriculture,
2. Smt. Sushila W/ Basavaraj Gourimath,
Age : 56 years, Occ : House hold work & Agriculture,
Both are R/o: Gothe, Tq: Jamkhandi, Dist: Bagalkot.

... Plaintiffs

(Represented by Sri. A.P.K., Advocate)

- Vs -

1. Smt.Mahadevi W/o Sidarayya Hiremath,
Age : 65 years, Occ : House hold work & Agriculture,
R/o : LIG – 61 KHB Colony, 4th Stage,
Near RMP Colony, Kuvempu Nagar,
Mysore.

2. Smt. Shobha W/o Sangayya Hiremath,
Age : 50 years, Occ : House hold & Agriculture,
R/o : Daneshwari Nilay, Tiwari Chaal,
Line Bazar, Dharawad.
3. Smt. Neelabai W/o Vidyadhar Mamadapur,
Age : 45 years, Occ : House hold & Agriculture,
R/o : Virakta Math complex, Devi Medicals & General
Stores, Near Ambabhavani Temple, Jorapur Peth, Vijayapur.
4. Arun S/o Basavaraj Gourimath,
Age : 33 years, Occ : Business & Agriculture,
R/o : Gothe, Tq : Jamkhandi.

... Defendants

(Deft. No.1 represented by Sri. K.P.K., Adv)

(Deft. No.2 represented by Sri. S.B.H/K.P.O., Advocates)

(Deft. No.3 represented by Sri. S.V.R., Adv)

(Deft. No.4 represented by Sri. P.P.N., Adv)

: PARTIES IN I.A No.XI :

1. Smt. Shobha W/o Sangayya Hiremath & others

... Applicants/Defendants

- Vs -

1. Smt. Bourawwa W/o Channayya Math @ Ganachari,
& another

...Opponents/plaintiffs

i.	Provision under which the application is filed	:	IA.No.XI filed U/o.XIII Rule 1 R/w Sec. 151 of CPC
ii.	Relief sought for	:	Seeking direction against the plaintiffs & defendant No.4 to produce documents.
iii.	The date on which the application is filed	:	02.08.2023
iv.	Number of the application	:	I.A.No.XI
v.	The date on which the objection is filed by different opponents	:	09.08.2023 & 22.08.2023. Both the counsels have concluded their arguments on 08.11.2023.
vi.	The date on which the order was passed on the said application	:	08.12.2023

: ORDER ON I.A No.XI:

1. The defendant No.2 has filed IA.No.XI U/o.XIII Rule 1 R/w Sec.151 of CPC with a prayer to direct the plaintiffs and defendant No.4 to produce Original Partition Deed and a blank stamp paper worth of Rs.200/- which bears signatures of plaintiffs, defendants No.1 to 3 and an elderly person by name Shrishail Maigur resident at Gothe village, in this suit.

2. In support of above application, the defendant No.2 has sworn to an affidavit on her behalf & on behalf of defendant No.3. She has mainly stated in the affidavit that, her father by name Channayya S/o. Mallayya Math died on 29.07.2020 at Gothe village. After his demise, the plaintiffs, defendants No.1 to 3 and their mother have temporarily got divided their family properties through a document namely "Temporary Agreement" and accordingly they have been cultivating their respective shares. She further stated that, aforesaid two original documents are with the plaintiffs & defendant No.4. They have given the photo copies of said documents to her. After filing of this suit, neither the plaintiffs nor the defendant No.4 have produced said documents in this suit. She further stated that, as aforesaid documents are necessary for adjudication of the matter in dispute, the plaintiffs & defendant No.4 be directed to produce aforesaid Original documents in this suit. If above application is not allowed, she will be put to hardship & inconvenience. With this, the defendant No.2 has prayed to allow above application.

3. On the contrary, the plaintiffs have filed objection to above application through their counsel by denying whole contents of the affidavit annexed to above application. They have mainly contended that, above application is not maintainable under the provision Order XIII Rule 1 R/w Sec. 151 of CPC. The said provision does not mandate the parties to produce documents. They have further contended that, there is no such document in their custody as stated by the defendant No.2, thus the question of production of said documents does not arise. They further submitted that, they have filed this suit for the relief of partition & separate possession claiming 1/5th share in the suit schedule properties and also asserted in the plaint itself that, no partition has taken place among themselves & defendants No.1 to 3 till today by metes & bounds. Therefore above application is not maintainable. They have further submitted that, the Hon'ble High Court of Karnataka has already given direction to dispose off the matter as soon as possible, but the defendant No.2 filed this application with intent to drag on the matter & divert the case in another

way. With this, the plaintiffs have prayed for dismissal of above application with cost of Rs.5000/-.

4. The defendant No.4 filed objection to above application, which is nothing but replica of the objection filed by the plaintiffs.
5. Heard both side. Perused application, objection, pleadings, documents & all other materials placed on record. Upon going through the same, the following points arise for consideration:

POINTS

1. Whether the defendants No.2 has made out reasons & grounds to direct to the plaintiffs & defendant No.4 to produce documents as mentioned in above application ?
 2. What order ?
6. Having heard arguments canvassed by both the counsels and going by the materials on record, this court answers to above points as under:

Point No.1 : In the negative.

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

: REASONS :

7. **Point No.1:** The plaint reveals that, the plaintiffs have filed this suit for the relief of partition & separate possession claiming 1/5th share in the suit schedule properties & for other equitable reliefs. On the contrary, the defendants No.2 & 3 have filed written statement with counter claim by taking various contentions & claiming their 1/5th share in the counter claim properties. It is to note that, after filing of written statement & counter claim, the defendants No.2 & 3 have incorporated about aforesaid documents in their written statement by way of amendment.

8. During the course of arguments, counsel for the defendants No.2 & 3 urged that, the defendants No.2 & 3 have issued legal notice to the witnesses who have put their signatures on the partition deed, stating that themselves & their sisters would resolve their dispute, hence they viz., witnesses should not interfere into their family matter. In turn, said witnesses gave reply to said notice, wherein they have admitted about aforesaid partition deed & blank stamp paper.

9. On the basis of the reply given by the witnesses, the defendants No.2 & 3 have moved this application to direct the plaintiffs & defendant No.4 to produce documents stated supra. Admittedly said alleged witnesses are strangers to the family of the plaintiffs & defendants. Except said reply, the defendants No.2 & 3 have not produced any prima facie material which show or demonstrate that, the plaintiffs & defendant No.4 admit the custody of said documents. In the absence of such cogent material, no such direction can be issued against the plaintiffs & defendant No.4.
10. Furthermore the Order XIII Rule 1 of CPC specifies the time & stage for production of Original documents in the suit. It does not speak about giving direction to either parties to produce documents. In view of above discussion, it is opined that, as the defendant No.2 has failed to substantiate aforesaid documents are in the custody of plaintiffs & defendant No.4, the application deserves to be dismissed. Accordingly, point No.1 is answered in the negative.
11. **Point No.2:** In view of above findings, the following order is passed:

: O R D E R :

IA No.XI filed U/o XIII Rule 1 R/w
Sec.151 of CPC by the defendant No.2 is
hereby rejected.

No order as to costs.

*(Dictated to the stenographer directly on computer, typed by her, corrected
then pronounced by me in the open Court on this the 08th day of December, 2023*

Sd/-
(Sri. Rajashekhar S. Harsoor)
Addl. Senior Civil Judge,
Jamkhandi