

IN THE COURT OF THE SENIOR CIVIL JUDGE
AND JMFC,
GAURIBIDANUR

Present : Smt. Renuka Devidas Raikar,
B.Sc.,LL.B.
(Spl.),
Senior Civil Judge & JMFC,
GAURIBIDANUR.

O.S.No.37/2014

Dated : This, the 26th day of July, 2019

Plaintiffs: Smt.Mumtaj and others

(By Sri.F.B, Advocate)

- **V/s** -

Defendants: Adam khan and others

(By Sri.G.N.R. Advocate for D.1, D2(a)
to(defendant) by Sri.R.C. Adv., D3(a) in
person, D3(b)-absent, D3(c) -)

Parties to IA XIII AND XIV

Applicant: Khadar Subhan Khan
(GPA holder of D-1)

VS

Opponent: Smt.Mumtaj
(plaintiff)

COMMON ORDERS ON IA NO.XIII & XIV

Present I.A.XIII is filed on behalf of defendant No.1, U/s.151 of C.P.C. praying for reopening defendants case for further evidence and I.A.XVI is filed U/o.18 rule 17 r/w sec.151 of C.P.C. seeking for recall of D.W. 1 for further examination in chief for marking certain documents on behalf of said defendant No.1.

2. In the affidavit accompanying both the applications it is stated that, the above case is posted for arguments on merits. However during the course of evidence of defendant No.1 he could not produce bank statement relating to State Bank of Mysore, Gauribidanur and said document is very essential and necessary for proving the defense taken on behalf of defendant No.1.

3. It is stated that, if he is not permitted to get his case reopened and to get marked the

documents produced on his behalf, then irreparable loss will be caused to him. On the contrary, no harm or prejudice will be caused to other side. Hence, prayed for allowing the applications and for reopening defendants' side and for recalling D.W. 1 for further examination in chief for marking the documents on his behalf.

4. Learned counsel for plaintiff filed objections to both the applications and contended that the applications are not maintainable either in law or on facts and liable to be dismissed. The grounds mentioned in the application and affidavits are not specific to support the contention of defendant No.1. All the averments of affidavit are false and baseless.

5. It is contended that the suit is for partition and separate possession of the family properties and there is no specific pleadings in the written

statement of defendant No.1 regarding the bank transactions. Moreover when D.W. 1 is examined before this Court at the earlier stage he has not disclosed about any money transaction or bank statement. Hence bank statement is not at all material proof as the evidence of both the sides is completed and matter is set down for final arguments. There is no necessity to reopen the defendants' case for adducing further evidence. Hence, prayed for dismissing the applications with exemplary costs.

6. Heard the arguments of both the sides.

7. On considering the materials placed before me, the Points that would arise for my consideration are as follows:

1. Whether defendant No.1 has shown sufficient grounds for reopening his side and recalling him for further examination in chief?

2. What order ?

8. My answer to the above point is as follows:

Point No.1: In the Affirmative

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

REASONS

9. **Point No.1:-** Here the present suit is filed by the plaintiffs against the defendants for partition and separate possession of their legitimate $2/3^{\text{rd}}$ share in the suit schedule property by metes and bounds. It is the case of plaintiffs' that they and defendants 1 to 3 are Muslims and they are governed by Hanafi school of Mohammedan law and they are tenants in common of the suit schedule property. There is no partition in their family property till today.

10. It is the case of plaintiffs that, one Khadar Khan is the propositus of their family and he married one Mahaboobi and they have begotten 5 children they are Beebijan, Adem Khan, i.e.

defendant No.1, Fathima, Basheer khan, Vazeer Khan i.e. defendant No.3. Both the daughters are dead. Plaintiffs 1 to 4 and defendant No.4 are the children of deceased Beebijan. Plaintiffs 5 and 6 are the children of deceased Fathima.

11. It is the plaintiffs case that, originally suit property was belonging to one Mahaboob Bee daughter of Dhavath khan and she acquired the same by inheritance vide RR 6330. After death of Mahaboob Bee and Khadar Khan defendant No.1 got the property to his name on principles of inheritance vide IHR No.22/80-81 and thereafter defendant No.1 and 2 by colluding with the revenue authorities got created documents regarding division and got mutated the Khatha entries in their names vide M.R.No.80/2007-08 without the notice and consent of plaintiffs.

12. Here the specific contention of plaintiffs is that, as they are also the legal heirs of Mahaboob Bee, they are having their definite share pertaining to the share of their mother i.e. Beebijan and Fathima. Hence they have prayed for partition and separate possession of their definite shares in the suit property.

13. Here defendant No.1 has filed written statement by denying the plaintiffs case and the specific contention of defendant No.1 is that Smt.Mahaboob Bee W/o.Khadar Khan purchased the suit property under registered sale deed long back and on the basis of the same her name is mutated in the records of the suit property and after death of Mahaboob bi and Khadar Khan the suit schedule property is devolved on defendants 1 to 3 and they are in possession and enjoyment of the same as tenants in common.

14. It is contended that, there is no relationship between defendants 1 to 3 and Davath Khan under whom the plaintiffs are claiming their share in the plaint schedule property. It is the specific case of defendant No.1 that, at the time of registration of sale deed in the name of Mahaboob Bee her husband was not alive and during her life time Mahaboob Bee had not left any testamentary document. She has not incurred any debts and she was under the care and custody of the defendants 1 to 3. Hence after her death said defendants 1 to 3 have succeeded to the suit property.

15. It is contended that, the suit property is not liable for division and plaintiffs are not entitled for any share in the same and they have no locus standi to claim partition and separate possession of the plaint schedule property. It is further the specific case of defendant No.1 that, in order to

over come family needs and necessities defendants 1 to 3 have sold plaint schedule property for valuable consideration vide registered sale deed in favour of one Khadar Subhan khan S/o.Adem Khan during the year 2013 and handed over the possession to him. It is contented that plaintiffs are not at all related to defendants 1 to 3. Hence their claim is not sustainable.

16. On perusal of the records it is forth coming that, after framing of issues, evidence of either parties is recorded and when the matter was posted for arguments on merits of the case, defendant No.1 has come up with present application and also another application for production of documents and the application for production of documents was allowed as Learned Counsel for plaintiffs submitted as objections for the same.

17. Now the case of defendant No.1 is that, to mark those documents which are produced on his behalf, it is necessary to recall D.W. 1 for further examination in chief and if he is not permitted to get those documents marked on his behalf, then irreparable loss and hardship will be caused to him and it will be difficult for him to prove his defense. Hence he prayed for an opportunity to get the documents marked on his behalf.

18. The only contention of plaintiffs herein is that defendant No.1 has not pleaded in his written statement regarding the bank transaction and availability of documents bank statement etc.,. Hence at this stage when the matter is posted for arguments there is no occasion for reopening the case and permitting the defendant No.1 to get marked the documents.

19. No doubt the present suit was posted for hearing the arguments on main, however it is held in catena of decisions that, in order to avoid multiplicity of proceedings either parties must be permitted to produce documents on their behalf in support of their case to lead further evidence even at belated stage prior to judgment.

20. Moreover order 8 rule 1 C.P.C. clearly contemplates that documents are to be produced at the earlier stage. However at later stage if the documents are available, parties can be permitted to produce the same at later stage with the lieu of the Court. Even in the instant case defendant No.1 at later stage produced the documents and for receiving those documents, Learned Counsel for plaintiffs submitted no objections.

21. Now, in case defendant No.1 is not permitted to get those documents marked on his behalf the

very purpose of producing the documents will be frustrated. If he is permitted to get the document marked, plaintiffs have got every opportunity to subject him for cross examination on the basis of those documents. Hence this Court is of the opinion that, in order to avoid future multiplicity of proceedings it is necessary to reopen defendants' case and to recall D.W. 1 for further chief for marking the documents. Hence in view of my discussions made above, **I answer point No.1 in the Affirmative.**

22. POINT No2: In view of my findings on point No.1, I proceed to pass the following:

ORDER

IA No.XIII and XIV filed on behalf of defendant No.1 U/s.151 of C.P.C. and U/o.18 rule 17 r/w sec.151 of C.P.C. are hereby allowed.

**Defendants side is reopened. D.W. 1
is recalled for further chief for marking
the documents produced on his behalf.**

No order as to costs.

**Call on for further chief of D.W. 1 by
30.7.2019.**

(Dictated to the Stenographer, transcribed and typed by her, transcription corrected and signed by me, then pronounced by me in the Open Court on this the 26th day of July, 2019).

(Renuka D Raikar)
Senior Civil Judge & JMFC,
Gauribidanur.

Order pronounced in the open court
Vide separate pages

ORDER

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(Renuka D Raikar)
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