

i. Provision under which the application is filed	IA No.3 U/ ORDER 16 RULE 6 R/w SECTION 151 of C.P.C FILED BY DEFENDANT No.1, 2 to 6, 8,9,11 to 14
ii. Relief sought for	SUMMONS THE DOCUMENTS MENTIONED IN THE APPLICATION.
iii. The date on which the application is filed	18.04.2023
iv. Number of the application	IA.No.3
v. The date on which the objections are filed by different opponents	OBJECTIONS FILED BY THE PLAINTIFF ON 15.07.2024
vi. The date on which the orders were passed on the said application	25.07.2024

ORDERS ON IA.No. 3 U/ ORDER 16 RULE 6 R/w SEC 151 of C.P.C

The present application is filed by the counsel for the defendant No.1, 2 to 6, 8, 9, 11 to 14 when the matter was posted for written statement of D1, 2 to 6, 8, 9, 11 to 14 and objections to IA.No.1 and reissue summons to D.7, 10, 15 and 16 on 25.05.2023. The said defendants have advanced the matter on 18.04.2023 and filed IA No.3 under Order 16 Rule 6 read with Sec. 151 of C.P.C. seeking this Court to summon the documents mentioned in the application which is in custody of either the Tahashildar Koppa Taluk, Koppa or Chethan B.K., Taluk Surveyor, Hassan Taluk, Hassan City in the interest of justice and equity.

The documents mentioned in the application is as follows:

“ The data sheet/ work sheet prepared while conducting survey of the land bearing Sy.No. 2/2 of Moorugadde Village, Megunda Hobli, Koppa Taluk as per the order of Tahshildar, Koppa Taluk, in LND. (ಇತರೆ) CR 48/2022-23 dated 02.12.2022”

2. In the affidavit in support of IA No.3, the defendant No.2 has submitted that the matter is posted for written statement and objections. The defendant No.2 has further stated that the Anaparai Estates Ltd., filed a suit in O.S. No. 50/2019 pending on the file of this Court against one Janav, the so called President of a Trust in the present suit. It is stated that in the said suit, this Court was pleased to grant interim injunction restraining the said defendant from interfering with peaceful enjoyment of the suit schedule property in O.S. No. 50/2019, wherein the disputed temple is situated.

3. The defendant No.2 has further stated that the said defendant has not challenged the said order and the said order has attained finality and the said defendant with an ulterior motive of defeating the

said order filed the present suit making false and baseless allegations against the defendants. The defendant No.2 has stated that the same temple is situated in Sy. No. 2/3 of Moorugadde village, Megunda Hobli, Koppa Taluk and not in Sy.No. 2/2 as stated in the present suit. The said Janav had admitted the said fact in O.S. No. 50/2019 and now in order to come over the said order of TI, he has colluded with revenue officials and got prepared a survey sketch showing the location of the temple in Sy.No. 2/2. It is stated that the said sketch does not depict the true facts about the location of the said temple.

4. The defendant No.2 has further stated that he had applied under the provisions of RTI Act to get the entire documents in connection with preparation of the said sketch and also applied for the work sheet/data sheet prepared while conducting the said survey on the basis of an order of Tahashildar, Koppa. It is stated that one Chetan B.K., the Surveyor attached to the Tahashildar office is said to have prepared the said survey sketch which is now produced by the plaintiff. The defendant No.2 has further stated that the said sketch is tailor made in order to suit the claim of the plaintiff. It is stated that the work sheet/data sheet prepared during conducting of survey is very much necessary to cross verify the said survey sketch and as such the defendant No.2 has applied for the said work sheet/data sheet, but the Tahashildar though granted other documents, has not given the work sheet/data sheet. The defendant No.2 has stated that he has made several efforts to get the same, but he could not get the said important documents which may be in the custody or possession of Tahashildar, Koppa Taluk, or the said surveyor by name Chetan B.K., who is presently working in Hassan District. Hence, the present application is filed and if the annexed application is not allowed, they will be put to untold hardship and inconvenience as it will be very difficult for them to demonstrate that the said survey sketch is false and created one. On the other hand if the annexed IA is allowed, no prejudice will be caused to the otherside. By stating all these grounds the defendant No.1, 2 to 6, 8, 9, 11 to 14 have prayed to allow the application.

5. On the other hand the plaintiff has resisted the present application by filing his objections and contending that the present application is not maintainable in law and facts and is liable to be dismissed. The plaintiff has contended that the defendants have filed the present application with an intention to drag on the matter and delay the trial and the same is liable to be rejected. It is contended that the defendant No.2 has sworn a false affidavit and there is no cogent evidence forthcoming. The plaintiff has further contended that the application is not supported with any good reason and that the documents which are intended to be summoned by the defendants are the public documents as defined under Sec. 74 of Indian Evidence Act and they are to be obtained by applying in the concerned office. Hence, they are not to be summoned and further they had no relevance to the present case.

6. The plaintiff has further contended that the documents which are obtained and produced are not properly attested and the issuing authority has violated the provisions of the RTI Act. It is contended that there is serious miscarriage of rules at the time of issuing the documents

under the RTI Act and this Court may be pleased to take cognizance of the offences for having violated the Act. The plaintiff has contended that the present application is devoid of merits and the same is liable to be dismissed. By stating these grounds the plaintiff has prayed to dismiss the application with costs.

7. Heard both sides.
8. Perused all the documents on records.
9. The following points arise for my consideration:-

POINTS

1. Whether the defendant D1, 2 to 6, 8, 9,11 to 14/applicants have made out sufficient grounds to allow IA No.3 at this stage?
2. What order?

10. My findings on above said point is as under:-

Point No 1: In the Affirmative.

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

REASONS

11. **Point No.1:-** This is a suit filed by the plaintiff/Bagavan Shree Babbuswamy, Shree Chamundeshwari Ammanavaru Devasthanam represented by its President for the relief of Permanent Injunction against the defendants in respect of 'A' and 'B' schedule properties. And when the case was posted for written statement of D1, 2 to 6, 8, 9, 11 to 14 and objections to IA.No.1 and reissue summons to D.7,10,15 and 16 on 25.05.2023, the defendants have advanced the matter on 18.04.2023 and come up with the present application and opposed by the plaintiff. At the time of arguments the learned counsel for the defendant D1, 2 to 6, 8, 9, 11 to 14 has produced the photocopy of the RTI application, certified copy of the information provide under the RTI Act.

12. On perusal of the contentions of the written statement, it shows that the defendants have contended that the location of the temple is in Sy No.2/3 and not in Sy.No.2/2 as stated by the plaintiff. The plaintiff has stated that the said temple is situated in extent of 0.5 guntas of land situated in Sy No.2/2 of Murugadde Village of the Megunda Hobli Koppa Taluk and the said Survey Number belongs to the Balanoor Plantations and Industries Ltd and the said temple is in existence prior to independence.

ORDER XVI RULE 6 OF CPC reads as follows:-

“ Any person may be summoned to produce a document, without being summoned to give evidence, & any person summoned merely to produce a document shall be deemed to have complied with the

summons, if he causes such document to be produced instead of attending personally to produce the same”.

13. In the present case, the documents sought to be produced before the Court are admittedly public documents, and it is also clear that their presence is very much required for determining the location of the suit properties precisely. Except the objection on the ground that the defendant No.2 could have got the certified copies of the same, the other objections at this stage cannot fall in the way for allowing this I.A. Hence, looking to the facts and circumstances and the nature of the suit and in the interest of justice, the I.A. No.3 filed by the D1, 2 to 6, 8, 9,11 to 14/ applicants deserves to be allowed. Accordingly, I answer point No.1 in the affirmative.

14. **Point No.2:-** In view of my findings on point No. 1, I proceed to pass the following :

ORDER

The I.A.3 filed U/ **ORDER 16 RULE 6 R/w SECTION 151 of C.P.C** by the D1, 2 to 6, 8,9,11 to 14/ Applicants is hereby allowed on costs of Rs.200/-.

Issue summons to Tahashildar Koppa Taluk, Koppa or Chethan B.K., Taluk Surveyor, Hassan Taluk, Hassan City to produce the documents has sought in the I.A. No.3, if P.F. paid, returnable by **31.08.2024**.

Sd/-
**Civil Judge & JMFC,
Koppa.**