

ORDER ON IA NO.26 FILED UNDER ORDER
16 RULE 14 R/W SEC.151 OF C.P.C

This application is filed by the counsel for the plaintiffs seeking order for issuance of summons suo motu to the defendant No.2, to enable examination on behalf of the plaintiffs.

2. This application is supported with an affidavit sworn to by the plaintiff No.4 wherein he has stated that they have filed this suit against the defendants seeking partition and separate possession of the suit schedule properties. After the filing of the suit, the defendants appeared through counsel and filed their written statement by denying the plaint averments. The plaintiffs' evidence has been completed, and the matter was posted for the defendants evidence. At this stage, the GPA holder of the defendant No.4 examined as D.W.2, has filed his chief-examination affidavit on behalf of all the defendants. Further stated that as stated in the plaint, the suit schedule properties, originally standing in the name of the common ancestor Kariyappa S/o Hanumanthappa, has been fraudulently transferred to the in the name of the defendant No.2, Krishnappa S/o Karekal Bheemappa, by creating false genealogy, death certificate, and other documents, falsely projected himself as the son of the said

Kariyappa and, in collusion with revenue officials, secured illegal mutation orders in IHC No.13/2011-12 and M.R.No.44/2011-12. The defendant No.2 is neither a descendant nor a blood relative of the plaintiffs or the defendant No.1 and is not the son of the common ancestor Kariyappa. Despite having no lawful right, title, or interest over the suit schedule property, the defendant No.2, in collusion with revenue authorities, created false records and illegally got the khata transferred to his name. Based on such fabricated records, he executed a sale deed dated:07.12.2015, registered as document No. 4322/2015-16 in the office of the Sub-Registrar, Channagiri, in favor of the defendant No.3. The said sale deed, created without the knowledge of the plaintiffs, does not affect the plaintiffs' lawful rights over the suit schedule property. The defendant No.2 had earlier fabricated revenue records and subsequently created the sale deed; hence, he is a necessary to examine in this suit.

3. It is further submitted that the GPA holder of the defendant No.4, in cross-examination, has stated that he is unaware whether the defendant No.2 is alive and has no knowledge about him, but admitted that there is no impediment for the defendant No.2 to appear and depose before the court. This shows lack of

proper knowledge on the part of the witness. The defendant No.2 is in possession of crucial facts and documents relating to the disputed property, and his examination is essential for proper adjudication of the case. In the interest of justice, it is necessary that this court be pleased to issue summons to the defendant No.2 to secure his presence and evidence. The present application is filed in good faith. If this court does not allow the application, the plaintiffs will suffer irreparable loss both legally and financially. On the other hand, if the application is allowed, no prejudice or hardship will be caused to the defendants. Therefore, he prayed to summons suo motu to the defendant No. 2.

4. On the other hand the learned counsel for the defendant No.2 has filed objection. In the objection he contended that when the primary evidence is available on record, the question of reconsidering the evidence does not arise at all. When the defendant no.2 has not lead evidence, the question of cross of him does not arise at all. The plaintiff has to prove his case by his own evidence. The plaintiff himself admitted that the defendant No.2 sold the property to the defendant No.3 and in turn the defendant No.3 sold the property to the defendant No.4 and the defendant No.4 sold the property in bits to other defendants. Hence, IA not maintainable and

liable to be dismissed in limine. Hence, he prays to dismiss the application.

5. Heard the arguments and perused the records. The following points arise for my consideration:

1. Whether the plaintiffs have made out sufficient grounds to allow the I A. No.26 filed U/o 16 rule 14 R/w Sec. 151 of CPC?

2. What order?

6. My answer to the above points are as follows:

Point No.1: In the Negative

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

REASON

7. POINT NO.1: The present suit is filed by the plaintiffs against the defendants for relief of partition and separate possession. Now, the case is posted for arguments in the meantime the present application filed by the plaintiffs, with a prayer to issue summons to the defendant No.2 to give evidence.

8. It is settled principle that while the court has the power under order 16 Rule 14 to summon any person, this power is to be exercised guardedly and not as a matter of routine. The practice of the plaintiff calling the defendant No.2 as their own witness is generally discouraged by higher courts unless exceptional

circumstances exist. In the present case the defendants have already lead evidence through GPA holder of the defendant No.4. The plaintiffs have not shown what unique information only defendant No.2 can provide that cannot be elicited through cross examination of existing witnesses or available documents. No exceptional grounds to exercise the court's suo motu power, and observing that the facts are already covered by the GPA holder of the defendant No.4's testimony. On these grounds, the plaintiffs have failed to make out grounds to allow the application. Accordingly, I answer the point No.1 in the **Negative**.

9. POINT NO.2: In view of my findings on Point No.1, I proceed to pass the following:

ORDER

The IA No.26 filed by the plaintiffs under order 16 Rule 14 R/w Sec.151 of CPC is hereby rejected.

No order as to cost.

Sd/-

**Senior Civil Judge and JMFC.,
Channagiri.**