

**IN THE COURT OF THE II ADDL CIVIL JUDGE &
JMFC, CHANNAGIRI.**

Dated: 14th Day of October 2024

PRESENT: **SMT. MAHALAKSHMI G M.A. L.L.B.,**

II Addl Civil Judge & JMFC, Channagiri.

OS No.37-2017

BETWEEN :

Bharamappa and others

...Plaintiffs

AND

Basavarajappa and others

...Defendants

I.A. No. XII

BETWEEN :

Basavarajappa and others

...Applicants/Defendant No.3

AND

Bharamappa and others

...Opponent/Original plaintiff

1.	Provision under which the application is filed:	:	Under order 12 rule 5 of CPC.,
2.	Relief sought for	:	Notice to Admit facts
3.	Date on which the application is filed	:	07.10.2023

4.	Number of the application	:	IA.No.XII
5.	Date on which the objections are filed by different opponents:	:	16.01.2024
6.	The date on which the orders is passed:		14.10.2024

Date: 14.10.2024
Place: Channagiri.

(Smt.Mahalakshmi G)
II Addl Civil Judge And Jmfc.,
Channagiri.

ORDER ON No.XII

This application preferred by the defendant No.3 when the case is posted for cross examination of PW.1 seeking notice to admit facts U/o 12 rule 5 of CPC., to the plaintiffs to admit the following facts:

1. The defendant No.3 stated that, Smt. Virupakshamma having no valid title and salable right over the site measuring 25 X 55 yards in KS No.458/2 to Tyavanige Village, Channagiri Taluk.

2. The Will dated 12.05.1964 wherein beneficiary is Smt. Virupakshamma and the property was bequeathed to said Smt. Virupakshamma bearing No.458, where testator not mentioned the measurement but mentioned the boundaries where towards Northern side there existed the rickyard of the Reveppalara Hariyappa.

3. The sale deed dated 04.03.1988 executed by the Bharamappa infavour of Vajrappa not challenged or not rectified the boundaries towards the northern side.

2. The plaintiff seriously objected the application and contented that the defendants have no right to serve the said notice at this stage when the case is posted for cross examination of PW.1 and the so called facts which are narrated in the notice can be directly asked to the PW.1 in the cross examination by the defendant side. Hence, the application filed by the defendant No.3 at this stage not survive. The suggestion made at para No.2 of the notice regarding Will dated 12.06.1964 is not with in the knowledge of PW.1. As for as the suggestion No.3 is concerned the sale deed dated 04.03.1978 has not been changed or not rectified. The boundaries towards the northern side of the suit property. The plaintiff came to the said fact on October 2016. When the cause of action for the suit arisen. Thereafter he verified the said sale deed and filed this suit. Hence, prays to dismiss the application.

3. Heard from both side,

On perusing the records, the defendant No.3 filed this application when the case is posted for the cross of PW.1. In the present case, the defendants not standing or relaying the Will as per their pleadings then question of answering the Will does not arise at all. Moreover, it is burden casted on the propounder of the Will to prove testamentary document as per law according to Sec 68 of the Indian Evidence Act-1872. Hence, the present application filed by the defendant no.3 is not maintainable at this stage. He had an opportunity to cross the PW.1 by suggesting the same which he mentioned in the present application. Hence, no sufficient grounds made out by the defendant no.3 to proceed proceedings on the application. Hence, the following order.

ORDER

**The application of notice to admit facts filed by the defendant No.3 U/o 12 rule 5 of CPC., is hereby dismissed with cost of Rs.100/-
For cross of PW-1.**

C/o 26-10-2024.

**Date:14.10.2024
Place: Channagiri.**

**Sd/-
(Smt.Mahalakshmi G)
II Addl Civil Judge And Jmfc.
Channagiri.**

