

KADG220013962019



**IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.,
CHANNAGIRI**

-: PRESENT :-

**Shri. Siddalingayya B. Gangadharamath,
B.Com. LL.B. (Spl),
Prl. Civil Judge & J.M.F.C.,
Channagiri.**

Dated: This the 2nd Day of September 2023.

O.S.No.217/2019

PLAINTIFF : Sri. T.M.Basavarajappa

V/s

DEFENDANT : Sri. Virupakshappa

I.A.NO.VII

Applicant/Defendant : Sri. Virupakshappa

V/s

Opponent/Plaintiff : Sri. T.M.Basavarajappa

1.	Provision under which the application is filed	Under Order 16 Rule 15 R/w Sec.151 of CPC
2.	Relief sought for	Seeking witness summons to PDO/Secretary of Gram Panchayat

3	Date on which the application is filed	20.06.2023
4.	Number of the application	I.A.No.VII
5.	Date on which the objections are filed by different opponents	28.06.2023
6.	The date on which the orders is passed	02.09.2023

ORDER ON I.A.NO.VII

The application filed under Order 16 Rule 15 R/w Sec.151 of CPC praying for summons to the PDO/Secretary of Mudigere Grama Panchayath for production of documents enlisted under the application. The application filed at the stage of further cross examination of PW.1

2. SOME AND SUBSTANCE OF THE AFFIDAVIT AS UNDER:

It is stated in the affidavit filed in support of the application that, the defendant filed application in terms of Right to Information Act, on 06.09.2022, seeking the records pertaining to boundaries of property No.73, new property No.177. In spite of those applications, the concerned PDO of Grama Panchayath or Secretary not responded too and not provided any informations as sought under it. He also stated that, he filed another application under the Right to Information Act, on 07.06.2023, in so far as property No.58,

measuring 70X80 is concerned, with regards to it's boundaries and the measurement. The said officials have not cooperated for the same and not provided the documents which are sought under the applications. The matter is set for the trial and therefore, the production of those documents at the hands of the authority stated in the application is absolutely necessary. If the application is allowed no harm or prejudice would be caused to the other side or otherwise the defendant will be put to greater injustice. The same cannot be compensated in terms of money. Thus, the defendant prays to allow the application.

3. STATEMENT OF OBJECTIONS FILED BY THE PLAINTIFF AS UNDER:

The plaintiff denied the entire contents of the affidavit and also disputed the maintainability of application. The plaintiff contended that, the defendant is seeking the documents of his property without producing any valid and cogent documents to sustain his ownership and possession. Instead of placing all those documents with reference to his title or possession in and over the property claimed under written statement, he has filed this false application shifting the alleged burden upon the PDO/Secretary of Grama Panchayath. Thus, the application is not tenable and is liable to be dismissed. The defendant got reopened the case from the stage of judgment on 20.01.2022

and instead of cross examining the PW.1 filed the instant application to protract the proceedings. Therefore, it is not tenable in the eye law and accordingly, plaintiff prays to reject the application.

4. Based on the rival contentions raised by the parties, the following points have been arisen for my consideration;

POINTS

1. Whether the defendant has made out the sufficient grounds to allow the application?
2. What Order?

5. Heard the learned counsels appearing for the plaintiff and the defendant. Perused the materials placed on record and my answer to above points as under:

POINTS

POINT NO.1 : In the Affirmative,

POINT NO.2 : As per final order for the following:

REASONS

6. **Point No.1:-** At the out set, the plaintiff filed the suit asserting his title and possession in and over the suit schedule property on the basis of registered sale deed dt: 10.03.1987, which is bearing SR No.2623/1986-87. He also claimed

possession of property and to sustain it has referred panchayath records, which are maintained in his name. Plaintiff stated that, he is utilizing the suit property for khana and kheni mane. He also used to collect hay-stack, manure, such other agricultural equipments, cattle shed. He succeeded the suit property from his father and mother, who died about 15 years back and thereafter, his name came to be mutated in panchayath records of suit property. The suit property was comprised under K.No.73 and it is now bearing K. No.177. His sister was married and she is at her husband's place. The defendant issued legal notice and which was suitably replied by the plaintiff. By that attempts, the defendant tried to interfere in peaceful possession of plaintiff over suit property and in the second week of October 2019, that too with the aid of supporters and as such he filed the suit.

7. The Defendant appeared and filed the written statement traversed all the facts narrated under the plaint as false. The defendant has made out case of non joinder of necessary parties, non disclosure of material facts and has denied title of plaintiff. The defendant sets up a title into suit property as it is his ancestral property and also contended that, the plaintiff owed an intention to gift it. Further, the defendant got amended the plaint by incorporating the para No.10. As per the said amendment portion, the defendant has taken up contention

that, the plaintiff is claiming the possession in and over the suit schedule property by mentioning the boundary of the property of defendant comprised in Khathe No.58. Thus, he prays to dismiss the suit as it is not disclosing any cause of action against the defendant.

8. The defendant has sought certain documents from the hands of PDO/Secretary of Mudigere Grama Panchayath, Channagiri Taluk, Davanagere District. As per this application, the said documents are pertaining to property No.58 and 73, which, in so far as measurement and boundaries of those properties. The defendant has sworn the affidavit to effect that, inspite of applications filed under the Right to Information Act, the authority not responded too and not provided all the informations sought thereunder. Under such circumstances, the defendant compelled to file the application to call the documents from the competent authority.

9. In support of this version, the defendant produced copy of applications forwarded to the Grama Panchayath, Mudhigere under the Right to Information Act, 2005, in form No.A and both the applications are dt: 06.09.2022 and 07.06.2023. He also produced the copy of Indian postal Order of Rs.50/- and also the postal window receipt dt: 07.06.2023. The letter forwarded by the counsel for defendant is also produced.

10. As can be seen from the pleadings of the defendant, the defendant has categorically disputed the boundaries and the situation of the suit schedule property. He sets the claim over the area in which plaintiff claimed the suit schedule property as it belongs to him and bearing khathe No.58. According to defendant, the plaintiff put a claim by mentioning K.M.No.73, new No.177 by placing the boundaries of defendant's property. It can be seen from rival contentions of the parties, the direct issue in the case on hand is shrouded around the boundaries and the measurements of suit property as well as the property of defendant. The properties are situated within the limits of Gram Panchayat and therefore, the said authority is competent enough to provide informations in that regard. Moreover, the said authority did not provides the informations/documents as against the application of defendant and as such the defendant has got every right take shelter of the provisions of Order 16 of the Code of Civil Procedure.

11. In such circumstances, the defendant claimed for the summons to the PDO/Secretary of Grama Panchayath for direction to produce certain documents enlisted under the application. The grounds narrated in the affidavit and in view of facts and circumstances of the case, the assertion of plaintiff and prayer for summoning the authority is absolutely valid and considerable at this stage, as the defendant has to cross

examine the PW.1 on all the issues of property is concerned. Therefore, the application filed by the defendant needs to be allowed and that would meet the ends of justice and equity also. It also accommodate fair opportunity to the defendant to substantiate his case.

12. As regards the objections of the plaintiff are concerned, the plaintiff is at liberty to prove his case with all the preponderance of probability by placing all relevant and cogent documents. At the same time, the defendant too. As can seen from the documents placed by the defendant along with the application reveal that, the authority had not supplied the necessary informations sought by the defendant under the Right to Information Act and that essentiated him to make this application. Under such circumstances, the objection statements of the plaintiff are not at all considerable and needs to be overruled to meet the ends of justice and equity. Accordingly, the **point No.1** is held in the **Affirmative**.

13. **Point No.2:-** As a result, I proceed to pass the following:

ORDER

**I.A.No.VII filed U/O.16 Rule 15 R/w
Sec.151 of CPC is hereby allowed with cost of
Rs.200/-.**

Consequently, the defendant is permitted to take witness summons to the PDO/Secretary of Mudhigere Grama Panchayath to produce documents as prayed under the application.

(Dictated to the Stenographer, transcribed and computerized by her, corrected by me and pronounced in the Open Court on this **2nd day of September, 2023**)

**Sd/-
(Siddalingayya B. Gangadharamath)
Prl. Civil Judge & J.M.F.C.,
Channagiri.**