

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

Dated: 6th Day of October 2023

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

II Addl Civil Judge & JMFC, Channagiri.

OS No.379/2022

BETWEEN :

1. Rudresh and others

...Plaintiffs

AND

1. K.A. Rajappa

...Defendant

I.A. No.I

BETWEEN :

1. K.A. Rajappa

...Applicants/ Defendant

AND

1. Rudresh and others

...Opponent/ Plaintiffs

1. Provision under which the Under Order 19 rule 1 and 2

2. Relief sought for Permanent Injunction

3. Date on which the application

is filed

24-02-2023

4. Number of the application	IA.No.III
5. Date of which the objections are filed by different opponents	08-06-2023
6. The date on which the orders is passed	06.10.2023

ORDER ON IA No.I

The defendant filed the IA-No.III U/o 19 rule 1 and 2 of CPC., praying to permit to produced the affidavits of neighboring land owners.

2. BRIEF FACTS OF THE AFFIDAVIT AS UNDER:

It is stated in the affidavit that, the defendant filed the suit for the relief of permanent injunction and along with it he filed the application of the temporary injunction. The defendant is contended that the suit property is with their possession. In order to show prima facie possession of suit schedule 'B' property by the defendant the defendant intends to file the affidavits of neighboring land owners. Thus, the permission in that regard is necessary. According, the defendant pray to allow the application.

3. The plaintiffs objection filed objection contenting that, the application is not maintainable in law and facts is liable to dismissed in limine. The affidavits filed by the deponents are false and the defendant trying to mislead the court by filling these type of affidavit by the

adjunct land owners of suit schedule properties. Their are no such documents to prove the location of the lands refereed in the affidavits. The proof of the affidavits can be ascertained only after the cross examination and that this stage they cannot be believed. Hence, It is prays to dismiss the application

4. Based on the rival contentions raised by both the plaintiff and defendant the following points would arise for my consideration.

POINTS

1. Whether the application is maintainable?

2. What order?

5. Heard the learned counsels appearing for the plaintiff and defendant perused the records and on perusal, my findings to above said points are as under

POINTS

Point No.1 : In the Negative

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

REASONS

6. Point No. 1: Before considering the application and it's facts, I would like to reproduce the Order 19 Rule 1, which reads as under.

“1. Power to order any point to be proved by affidavit: Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party bonafide desires the production of a witness for cross examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

7. Having referred the aforesaid provision, what it appears is, it is the discretion of the court as to call any of the party to make such affidavit, in order to prove the facts by affidavit. The purpose for which the aforesaid provision is meant for, can be ascertained prior to amendment to Code of Civil Procedure. Before amendment to the Code of Civil Procedure in the year 2002, there was a practice of recording the oral evidence of witnesses. At that moment, the courts can call the affidavit of any witness to prove the facts by way of affidavit so as to bind the witness to the statements made before the courts. After the amendment

to CPC., in the year 2002, drastic changes and catena of new procedures are incorporated in civil trail. By way of amendment to Order 18 Rule 4, parties to suit are allowed to file examination in chief affidavit in support of their case or in order to substantiate the version raised their respective pleadings. Before that the procedure was to recording of oral evidence. Under such circumstances, the Order 19 Rule 1 was parole provision to the oral evidence enumarated in, the then Order 18 Rule 4 of CPC.

8. The Honb'le Apex Court of India, the decision reported in, AIR 1967 SC122. Was pleased to held that, "Order 19 Rule 1 has to be read with Order 18 Rule 4 which states that the evidence of the witnesses in attendance shall be taken orally that Or.19 Rule 1 is intended as a sort of exception to the provisions contained in Order 18 Rule 4. "The power of the court to direct filing of affidavit in proof of a fact under Order 19 Rule 1 has to be read with Order 18 Rule 4. This prevision of Order 19 Rule 1 is an exception to Order 18 Rule 4. Having referred the said ration laid down by the Hon'ble Apex Court of India and the plaint reading of Order 19 rule 1, it emerges that, no such procedure can be laid to file the affidavit in proof of the prima facie case.

9. However, defendant has pressed into service the said provision to place the affidavits of neighbouring land owners in support of prima facie case in deciding the

IA.No.1. Therefore, in my considered opinion, the application on hand is not tenable and deserves to be dismissed. However, the defendant has liberty to file necessary affidavits in support of his case without the application also. Therefore, the very procedure resorted by the defendant is not recognized after the amendments to code of Civil Procedure. Thus, the **point No.1** held in the **Negative.**

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

ORDER

**The IA No.III filed by the
defendant under Order XIX Rule
1 of CPC is hereby rejected.**

No order as to cost.

(Dictated to the Stenographer, transcribed and computerized by him, script corrected and then pronounced by me in Open Court on this 6th day of October 2023.)

Date:06.10.2023
Place: Channagiri.

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