

**IN THE COURT OF PRL. CIVIL JUDGE &
J.M.F.C. AT BELTHANGADY.**

Present:-

Sri. Sandesha.K.,_{MA.LLB.}

(Prl. Civil Judge & J.M.F.C., Belthangady)

Dated: 12th Day of January, 2024

ORIGINAL SUIT NO. 455/2016

Plaintiffs:

1. Smt. Rathi,
W/o Narayana Moolya,
Aged about 35 years,
2. Rakshitha,
D/o Narayana Moolya,
Aged about 3 years,
3. Poojitha,
D/o Narayana Moolya,
Aged about 1 year,

All are R/at Manooru house,
Machina Village,
Belthangady Taluk.
Present R/at Janatha Colony,
Ramanagara, Uppinangady Village & Post,
Puttur Taluk. D.K

(By: Sri.A.S.K., Adv.)

:-V/S:-

Defendants:

1. Gangadhara,
S/o Late Dharnappa Moolya,
aged about 39 years,
2. Vinaya,
S/o Late Dharnappa Moolya,
aged about 46 years,
Both are R/at Manooru house,
Machina Village & Post,
Belthangady Taluk.

(By: Sri. S.N, Adv.)

1.	Provision under which application filed.	Under order VII rule 14(3) and section 151 of CPC.
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2.	Relief sought	Seeking production of additional documents.
3.	The date on which application filed.	14.09.2023
4.	Number of application	IA No.IV
5.	The date of which the objection filed by the respondent /defendant	13.10.2023
6.	The date on which the order were passed on the said application	12.01.2024

**ORDERS ON IA No.IV FILED BY THE PLAINTIFF
UNDER ORDER VII RULE 14(3) AND SECTION 151
OF CPC.**

The Plaintiff has filed this suit against the defendant for the relief of partition and mesne profits and such other reliefs that this Court may deem fit.

2. At the stage of further chief examination of Pw-1, the learned Counsel for plaintiff has filed I.A.No.IV U/o 7 Rule 14(3) and Section 151 of C.P.C., seeking production of additional documents.

3. In the affidavit filed in support of I.A.No.IV, the plaintiff has stated that, she has intended to produce some relevant documents in the above case. At the time of filing of above suit, plaintiff has produced above said documents as earlier document No.2 listed in the annexed application was produced in O.S No. 7/2016. Document No.1 listed in the annexed application was not in the custody of the plaintiff. Now it is just and necessary to produce said document for better adjudication of the

above suit. The failure to produce documents earlier either intentional nor deliberate, but it was only due to facts stated above. Hence pray for permission to produce document. If the application is allowed no harm, loss and injury caused to the defendants. Hence this application.

4. The learned counsel for the defendant has filed objection to the IA No. IV. In the objection he contended that, the application filed by the plaintiff is not maintainable either in law or in fact. The suit has been filed to make unlawful gain in collusion with the family of the defendants. In the affidavit and also plaint does not explained and does not pleaded that, how the suit schedule properties are belongs to the defendant, it is big question to answer to this court. Without legal documents how can plaintiff has pleaded about their property which is without foundation of the case. Plaintiff No.1 has produced certified copy of the document No.2 in O.S No. 7/2016 which is connected to this suit on the file of this court. But plaintiff No.1 has not produced the original Will till today. The cross examination of PW1 in O.S No. 7/2016, the plaintiff No.1 has adduced that document No.1 is not exists and as per the plaintiff No.1, document No.2 is legally correct document. Document No.1 is clearly explained the bequeath of the property. Document No.1 and 2 are the certified copy of the Will which are forgery document and not having legal entity and also not genuine document. Section 65 of Indian Evidence Act that, secondary documents may be given with regard to the existence, condition and the content of the

documents, when the original is shown to this court and the original document is sought to be produced before the court to clarify the difference otherwise the certified copies are not having legal entity.

5. It is further contended that, where the original documents are not produced without plausible reason and factual foundation for laying secondary evidence not established, it is not permissible for the court to allow the party to adduce secondary evidence. Will is a private document hence original will is needed for proving of the certified copies. This Hon'ble court is not permitted to produce certified copy of Will no injury, loss or hardship cause to the plaintiff. Hence pray for dismiss the application.

6. For disposal I.A.No.IV the following points arise for court consideration:

1. Whether the plaintiff has made out sufficient grounds to permit her to produce the documents?.

2. What Order?

7. Both side have argued in par with their pleadings. On perusal of the records and having heard the arguments of plaintiff and defendants court findings to above points are:

Point No.1 : In the **Affirmative**

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

REASONS

8. **Point No.1:-** It is settled principle of law that, procedural law should not be the mistress of justice, but a handmaiden of the justice. In other words, the procedural law should not defeat the substantive rights of parties. At the same time an ample opportunity must be provided to both side to produce the best evidence available to them.

8. In this case, the Plaintiff has pleaded that, plaintiff A schedule property belongs to the plaintiff and defendants jointly. Earlier those properties belongs to Late Dharanappa Moolya who is the father in law of the plaintiff No.1 as well as the grandfather of plaintiff No. 2 and 3. Dharanappa Moolya died intestate on 8.10.2012. after death of Dharanappa Moolya A schedule properties devolved his children namely Narayana Moolya, Gangadhara and Vinaya by rate of inheritance. As such Narayana Moolya entitled 1/3rd share of the A schedule properties. Out of the above named children, Dharanappa Moolya, Narayana Moolya died on 30.6.2015. on his death his 1/3rd undivided share in the A schedule property devolved his wife and children i.e., plaintiffs. Hence plaintiff has filed present suit.

9. The learned counsel for the plaintiff argued before this court that, the documents which are produced annexed with I.A No.IV are very much necessary to produce before this court for better adjudication of the suit. The plaintiff is intended to produce above said document. If the application is allowed no hardship and injury caused to

the defendants. Hence pray for allow the application. The learned counsel for the defendant argued before this court that, plaintiff has not placed original documents without producing original documents, certified copies cannot be received. Original documents are not produced without valid reason, the factual foundation laying secondary evidence not established, it is not permissible for the court to allow the party to adduce secondary evidence. Hence pray for dismiss the application.

10. Order 7, Rule 14 (3) was amended by the Code of Civil Procedure Amendment Act 22 of 2002, which is extracted hereunder-"R.14. Production of document on which plaintiff sues or relies.-(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit." Sub-Rule (3) of Rule 14 of Order 7 makes it necessary to obtain the leave of the court for allowing a document to be filed in a court, which was not filed along with the plaint or annexed in a list. Sub-Rule (3) of Rule 14 of Order 7 permits the plaintiff to file a document, which he intends to rely upon only with the leave of the court. Under these circumstances looking to the nature of the suit and stage of the matter if plaintiff is permitted to produce the documents annexed with this application as additional documents no prejudice will be caused to the defendants. Such being the case, there are no

grounds to reject the prayer of the plaintiff. After considering Order VII Rule 14(3) of CPC, it was held that mere non-mention of documents in plaint or subsequent incidental or supplemental proceedings in the suit does not in any manner affect power of the Court to grant leave to produce documents at subsequent stage. Non-mentioning of the documents sought to be produced at the subsequent stage it will not caused any prejudice to the defendants.

11. No doubt, the plaintiff has given no justification for not placing on record the said documents as and when they are taken, however, taking on record of the said documents would not prejudice the defendants considering the relief is concerned.

12. Needless to add, the plaintiff will have to prove said documents in accordance with law, the burden of which will be on the plaintiff. The defendants will also have right to question the authenticity of the said documents.

13. If the present application is allowed, no hardship or injury would be caused to the defendant. On the other hand, if it is rejected, the plaintiff would be deprived of his case and it would lead to multiplicity of proceedings. At the same time, the defendants shall have an ample opportunity to cross-examine the plaintiff and establish bonafides of the documents produced. Therefore, there are no reasons to reject the prayer of the plaintiff. Moreover, there is no bar to produce the document. Production of document and marking of document are

different. Accordingly, point No.1 is answered in the ***Affirmative.***

14. **Point No.2:-** In view of discussion made supra, this court proceed to pass the following:

ORDER

The I.A.No.IV filed by the plaintiff U/o 7 Rule 14(3) and Section 151 of C.P.C., is hereby allowed and cost of Rs.500/- and the documents produced by her is taken on record.

(Dictated to the stenographer, transcribed by him, corrected and signed by me and then pronounced in the Open Court on this 12th day of January 2024)

(Sandesha.K.)
Prl. Civil Judge & JMFC.,
Belthangady