

IN THE COURT OF THE II ADDITIONAL SENIOR CIVIL**JUDGE AND J.M.F.C. HUBBALLI**

Present:- Smt. Deepa G Manerkar,
B.Com. L.L.B, (Spl.)
II Addl. Senior Civil Judge & J.M.F.C.,
Hubballi.

Dated this the 04th day of August 2025

O.S. No.19/2024

Shabbir Ahmed S/o Peerasab Sagar

...Plaintiff/s

-Versus -

The Secretary, The Madani Co-operative Housing
Society Ltd., Hubballi and others

.....Defendants

IA.No. III

Shabbir Ahmed S/o Peerasab Sagar

APPLICANT/ DEFT -4

Versus -

The Secretary, The Madani Co-operative Housing
Society Ltd., Hubballi and others

OPPONENT/ PLFF.

ORDERS ON I.A.NO.III FILED U/O. 14 RULE 5(1)
R/W SEC.151 OF CPC.

The present I.A. is filed by the counsel for the plaintiff under Order 14 Rule 5(1) R/w Sec.151 of CPC to fame the additional issues.

2. In the affidavit annexed to the present I.A., it is sworn by the plaintiff that, the defendant No. 4 got executed the suit plots by practicing fraud on the 1st defendant society. When the said fraud came to the knowledge of the defendant No.1 society then its Secretary issued letter to the defendant No.3 and 4 complaining the illegal acts committed by the defendants No. 3 and 4. The defendant No. 4, who was himself the author of the said sale deed, incorporated one condition in the sale deed at para 10, that who ever desires to sell the plot, then plaintiff should not sell the plot within ten years from the date of execution of the said deed. But the defendant No.4, in spite of the said

condition had sold the plot No.2 in favour of defendant No.5 on 23.09.2021 that too within seven years from the date of the execution of the sale deed dated 22.03.2014. Hence, prayed to allow the application.

3. The counsel for defendant No.1 and 2 has filed objection contending that the application filed by the plaintiff is not maintainable either in law or on facts of the case as against the defendant No.1 & 2 society. The application filed by the plaintiff is false, frivolous and vexatious. This application is far away from truth. The proposed issues are not the material issues for fair trial of the case. The relief claimed by the plaintiff is no way concerned to the proposed issues. The plaintiff in this suit is claiming the relief of possession and setting aside the sale deeds. Plaintiff has to prove the contention taken by him in his plaint. Plaintiff cannot cast any liability to prove anything by the defendant

No.1 & 2 society. The proposed issues are filed just to protract the proceedings and harass and cause inconvenience to defendant No. 1 & 2 society. Hence prayed to reject the application.

4. The counsel for defendant No.5 has filed objection contending that the present I.A. is not maintainable either in law or on facts. That already issues are framed hence, no additional issues are required to be framed and present application is filed to drag the matter. There is no avernments in plaint that the defendant No.1, 3 and 4 by playing fraud got executed the sale deed no issues can be framed. No documents are produced in respect of said contention. Hence prayed to reject the application.

5. On the basis of rival contentions the points that would arise for my consideration is:

1. Whether the present application deserves to be allowed?
2. What Order?

6. Heard arguments from both side counsels. for defendant No.1 and 2 also filed written arguments.

7. My findings on the above points is as follows :-

Point No.1 : partly in the affirmative.

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

REASONS

8. **Point No.1:-** By way of present Ia the counsel for plaintiff has sought for framing of additional issues about creation and forging of sale deeds dt:22-03-2014 and letter dt: 06-11-2014 issued by defendant No.1 casting burden on the plaintiff to prove the same and one more issue regarding condition imposed in para

No.10 of sale deed dt:22-03-2014. It is pertinent to make mention that, the present IA is filed by the plaintiff for cancellation of sale deeds dt:22-03-2014 and 23-09-2021 and to direct the defendant No.1 and 2 to execute sale deed in his favour. On perusal of the issues which are framing, the proposed issue No.2 is already covered under Issue No.2 which is already framed. Hence, there is no question of framing propose additional issue No.2. however, the plaintiff himself wants to take the burden on himself of proving sale deed dt:22-03-2014 and letter dt: 06-11-2014 as created and forged documents. Therefore, there is no impediment for the court to frame the additional issue. As such the preset application deserves to be allowed in part. Accordingly, above point is answered **partly in the affirmative.**

9. **Point No.2** : In view of the findings and answer to point No.1, this court proceeds to pass the following:-

ORDER

IA No.III filed by the plaintiff under Order 14 Rule 5(1) R/w Sec.151 of CPC is hereby allowed in part.

(Dictated to the stenographer, transcribed and typed by her, corrected by me and then pronounced in the open court on this the 04th day August 2025.)

Sd/-
(Smt. Deepa G Manerkar)
II Addl. Senior Civil Judge and JMFC
Hubballi.