

IN THE COURT OF THE | ADDITIONAL SENIOR CIVIL JUDGE
& J.M.F.C., HUBBALLI

Present:
Sri. Ganapathi Prashanth M.,
B.A.LL.B.,
I Addl. Senior Civil Judge & J.M.F.C., Hubballi.

O.S. No.66/2019

Dated this the 22nd day of September, 2022

Plaintiff/s : Smt.Annapurna V.Uppin, since
deceased by her L.Rs.

.Vs.

Defendant/s : 1. Basavaraj @ Vasant C.Kajgar and
others.

PARTIES TO I.A.No.8 and 9

Applicant/s : Smt.Annapurna V.Uppin, since
deceased by her L.Rs.

.Vs.

Opponent/s : 1. Basavaraj @ Vasant C.Kajgar and
others.

ORDERS ON I.A. No.8 and 9

The plaintiffs have filed these I.As. under Section 151 of C.P.C., to reopen the plaintiff's side and recall the order dated 13/1/2022 and permit the plaintiff to adduce further evidence.

2. The defendants 3 and 4 have filed objections.

3. Heard, perused the pleadings and materials placed on record.

4. The point that arises for consideration is, Whether the prayer made by the plaintiffs can be granted ?

5. My finding to the above point is in the affirmative, for the following:

REASONS

6. This suit was originally filed in O.S.No.162/2001 on the file of 4th Addl.Civil Judge (Jr.Dn) at Hubballi. Ultimately said suit ended in return of plaint vide order dated 2/1/2015 and plaint was returned vide order dated 3/12/2018, after the plaintiff exhausting his remedies against the said order for return of plaint. Thus, this suit O.S.No.66/2019 is registered on presenting the same plaint of O.S.No.66/2019 before this court.

7. After appearance of the parties, it seems that the parties had adopted the same evidence before III Addl.Civil Judge Hubballi as the evidence was completed in the said suit before it came to be returned. The plaintiff adopted said evidence on 13/1/2022 and defendants adopted said evidence on 2/6/2022. Thereafter, this application is filed by the plaintiff to set aside the said adoption of evidence and permit the plaintiff to adduce fresh evidence in the suit.

8. The learned counsel for the defendants 3 and 4 have relied upon the decision reported in 2006(6) Kar.L.J. 291 (B.N.Siddananjappa (Since deceased by L.Rs.Rudramma) Vs. P.Srinivasan), wherein it is observed that after representation of the plaint, the court has to issue summons and proceed from the stage of filing written statement and the court which returned the plaint, has no jurisdiction to entertain the suit and even if such court recorded the evidence, same cannot be made use by any of the parties before the transferee court. Said decision being binding precedent, the leave as prayed for to be granted. Hence,

the above point for consideration is answered in the affirmative and this court proceed to pass the following:

ORDER

I.A.No.8 and 9 filed under Section 151 of C.P.C. by the plaintiff are hereby allowed.

The plaintiff is permitted to adduce further evidence by recalling the order dated 13/1/2022, as prayed for.

(Dictated to the Stenographer, transcribed and computerized by him, script corrected directly on computer and then pronounced by me in the Open Court on this the 22nd day of September, 2022)

(Ganapathi Prashanth M.,)
I Addl. Senior Civil Judge & J.M.F.C.
Hubballi.