

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 17th day of January, 2023

Plaintiff/s : Smt. Annapoorna W/o Virupakahappa
Uppin, since deceased by her Lrs.

.Vs.

Defendant/s : Basavaraj @ Vasant S/o
Chandrashekhhar Kajgar and others.

PARTIES TO I.A. DATED:12.12.2022

Applicant/s : Smt. Annapoorna W/o Virupakahappa
Uppin, since deceased by her Lrs.

.Vs.

Opponent/s : Basavaraj @ Vasant S/o
Chandrashekhhar Kajgar and others.

ORDERS ON I.A. UNDER SECTION 151 OF C.P.C.

The plaintiffs have filed I.A. under Section 151 of C.P.C., seeking to direct the defendants to furnish the Lrs. particulars of defendant No.3.

2. The defendant No.4 has filed objection.

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

4. The points for consideration are as follows:

1. Whether the direction as prayed for can be granted ?

2. What order ?

5. My findings on the above points are as follows:

Point No.1 : In the Negative.

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

REASONS

6. **Point No.1:** The present application is supported by memo of facts. It is stated by the advocate for the plaintiffs that the plaintiffs tried their best to collect the information about Lrs. particulars of defendant No.3, but they could not succeed inspite of their best efforts and prayed to direct the defendants to furnish the details of Lrs. of defendant No.3.

7. The objection of the defendant No.4 is that, it is duty of the plaintiffs to make efforts to locate the Lrs. of the deceased and they filed this application without making any efforts in the absence of the personal statement of the plaintiffs. The application is not maintainable and prayed to dismiss the application.

8. The learned counsel of the plaintiff has vehemently argued that, the application need not be supported by the affidavit except in the case of 3 categories of applications for which supporting affidavit is mandatory.

9. Per contra, the learned counsel for the defendant No.4 vehemently argued that, without affidavit of the party viz plaintiffs that they do not know the Lrs. details of the defendant No.3, the present application seeking direction from the Court is not maintainable.

10. Therefore, the short point for consideration in this Order is, whether the present application is maintainable without a supportive affidavit of the plaintiffs. Rule 18(2) of Karnataka Civil Rules of Practice, 1967 stipulates as follows:

(2) All facts, on which an applicant relies for making the prayer or obtaining the relief sought in the application, shall be set out in an affidavit accompanying the application. Where, however, the facts on which the application is based appear from the records of the case in the Court or relate to any act or conduct of the applicant's pleader himself, the Court may permit a memorandum of facts signed by the applicant's pleader to be filed instead of an affidavit.

Provided that it shall not be necessary to file any affidavit but only a memorandum of facts signed by the pleader in interlocutory applications seeking any relief other than the reliefs of temporary injunction, attachment, arrest, appointment of guardian or the appointment of receiver or amendment of a pleadings.

11. From the above, it is clear that the Rule is that the application must be supported by affidavit. The exception is when the facts appear from the records of the case or relate to the act or conduct of applicants pleader. Only under these 2 exceptions, an interlocutory application can be supported by memo of facts.

The proviso stipulates that in cases of temporary injunction, attachment, arrest and appointment of guardian or receiver and for amendment of pleadings, the filing of affidavit is indispensable.

12. In the light of the above law, it is clear that the efforts made by the plaintiffs and their failure to get the Lrs. particulars of defendant No.3 are neither borne out by records nor pertain to the Act or conduct of the advocate for the plaintiffs. Hence, the present application without the supportive affidavit of the plaintiff is not maintainable. Hence, **point No.1 is answered in the negative.**

13. **Point No.2:** In view of finding on point No.1, this court proceeds to pass the following:

ORDER

The application dated:12.12.2022 filed by the plaintiffs under Section 151 of C.P.C., is hereby dismissed.

(Dictated to the Stenographer, transcribed and computerized by her, script corrected directly on computer and then pronounced by me in the Open Court on this the **17th day of January, 2023**)

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