

ORDER ON IA NO. 20

The Advocate for defendant No.2 has filed application U/O. 11 R.14 R/w Sec.151 of C.P.C calling for the documents Cash Register, Mortgage Deed from defendant No. 4 to 6 from 2010-2015 in the interest of justice and equity.

2. Along with application, defendant No.2 filed affidavit stating that, DW.1 during cross-examination has admitted that, from 2010-2015 he has submitted Cash Register, Mortgage Deed to the Income Tax Department. Those documents have not produced before Court. In order to decide the case of the parties, those documents are required. Therefore, summon the documents. If the application is not allowed he will be put to more loss hardship. If allowed, no prejudice will be caused to other side. Hence, prays to allow the application.

3. The Advocate for defendant No.4 to 6 have filed objection contending that, the application filed by defendant No.2 is not maintainable either in Law or facts. Defendant No.1 and 2 have filed written statement in the year 2024 after 9 years of filing of suit. The defendant not shown any material that the alleged document are relevant to the issue in suit. Those documents are relevant to the matter in question. Because, the defendant No.1 and 2 have not filed any counterclaim. This is a partition suit. Those documents are not required. Defendant No.1 and 2 along with plaintiffs have sold the suit property through registered Sale Deed in the year 2010 after receiving sale consideration amount through cheque. Hence, prays for dismissal of application.

4. Heard. Perused the materials available on records.

5. The points that would arise for my determination is:

1. Whether defendant No.1 and 2 have made out ground to summon the documents from defendant No.4 to 6 as sought in the application ?

2. What Order ?

6. My findings on the above points as follows:

Point No.1 : In the Negative.

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

REASONS

7. Point No.1: At the outset the suit is filed by the plaintiffs against the defendants for declaration and permanent injunction declaring that, the agreement of sale deed dated 06.04.2005 is illegal, invalid and not binding on the share of plaintiff and the Sale Deed executed by defendant No.1 and 2 is illegal, obtained by fraud and misrepresentation and not binding on the plaintiff's share. After filing the suit, defendants filed written statement based on the pleadings of respective parties, issues have been framed by this Court. Plaintiff No.4 examined as PW.1 and got marked certain documents as 'P' series Exhibits. After closure of plaintiff side evidence, defendant No.4 examined as DW.1 and got marked certain documents as 'D' series Exhibits. Case has been partly cross-examined by the respective parties. Now at this stage, the Advocate for defendant No.1 and 2 have filed this application calling for the records from defendant No.4 to 6. Admittedly, defendant No.1 and 2 have not questioned the execution of Sale Deed since from 2010 to 2024 and it is not the case of the plaintiffs or defendant No.1 and 2, the sale consideration was not passed. If really the sale consideration

was not passed by defendant No.4 to 6, they would have filed the suit for recovery of sale consideration amount. The defendant No.1 and 2 have not filed any counterclaim in respect of sale consideration amount or the alleged Sale Deed executed by them in the year 2010. When defendant No.1 and 2 have admitted the execution of registered Sale Deed, the question of calling for the documents from defendant No.4 to 6 does not arise. Those documents are not required to decide the rights of the parties involved in this case. Therefore, the documents are not necessary. Defendant No.1 and 2 have not made out grounds to allow the application. Hence, I answer Point No.1 in the **Negative**.

Point No.2:-

8. From the foregoing discussions and the reasons stated therein and in view of my answer to point No.1, I proceed to pass the following:

ORDER

The Interim Application No. 20 filed by the applicant/ defendant No.2 Under Order 11 Rule 14 R/w Sec.151 of C.P.C is hereby dismissed.

No order as to costs.

Sd/-
(Yamanappa Karehanumantappa)
Prl. Sr. Civil Judge and JMFC.,
Hubballi.