

20.03.2018

For orders

ORDER ON I.A.No.8

The instant I.A. No. 8 is filed by the Applicants / Defendants through their Learned Counsel, Under Order 13 Rule 3 of CPC, with a prayer not to admit the documents produced before the Court, pertaining to business establishments in the name and style No.1 / M/s T.B. Lingade and No.2 / Prashant Metals for the reasons mentioned in the memo of facts.

2. On other hand, this I.A. is opposed by the plaintiff by filing statement of objections contending that the contents of I.A. and memo of facts of Advocate are false, frivolous and not maintainable either in law or on facts. No proper provision is quoted to file this I.A. As per plaintiff, the documents on record which are supposed to mark on behalf of plaintiff are pertaining to joint

family properties. They are relevant documents. The claim of the defendants is meritless, marking of these documents is necessary for fair and complete adjudication of the *Lis*. So, it is prayed for rejection of the I.A. with cost.

3. Heard and perused.

4. The following points arise for my consideration:

1. **Whether the Instant I.A.No.8 filed by the defendants, under Order 13 Rule 3 of CPC deserves to be allowed?**

2. **What Order?**

5. My findings on above points are as under:

Point No.1: In the Negative.

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

REASONS

6. **Point No.1:** This is a suit filed by the plaintiff against the defendants for the relief of partition and separate possession of 1/3rd share in the suit A and B schedule properties. The plaintiff is son of Bharamappa Lingade, he is no more. The defendant No.1 and 2 are legal heirs of propositus Tavanappa as per plaintiff. The suit properties are their joint family properties, they have been in joint possession enjoyment of the same.

7. On the other hand, the defendants through their Learned Counsel have filed written statement by denying the pleadings of plaint as false. They have admitted the relationship, but they have prayed for dismissal of suit as regards suit B-schedule property and by way of counterclaim, they have prayed for declaration of 1/3rd share in the A-schedule property.

8. After framing the issues, the evidence of PW1 is recorded. Thereafter it has been reopened, now the matter is posted for recording further chief-examination of PW1. As per order of this Court passed on I.A.No.2, the documents were summoned, as a result, the Assistant Commissioner of Commercial Taxes of Hubballi has produced various documents pertaining to A and B-schedule properties.

9. The learned counsel for the defendants by relying upon dictum of our Hon'ble High Court, laid down in a case **Thammegowda Vs. Siddegowda**, reported in **ILR 1991 KAR 4506** and it is prayed not to mark these documents since plaintiff has no share in the suit B-Schedule property.

10. Considering the pleadings of both sides and also facts and circumstances of the case, it appears that the documents which are summoned by this Court are produced, since marking of these documents does not dispense with its contents. The plaintiffs have to prove the contents and relevancy of these documents. So, there is no merit in the objections raised by the defendants to mark these documents through PW1, rather these documents are necessary for fair and complete adjudication of the *Lis*. *Since facts and circumstances are different, so, with due respect said dictum, same is not applicable to the version of defendants*. Hence, I answer Point No.1 in the “**Negative**”.

11. **Point No.2:** In view of my findings on point No.1, I proceed to pass the following:

ORDER

The I.A. No.8 filed by the defendants, Under Order 13 Rule 3 of CPC is hereby rejected.

For further Chief-examination of PW1 to mark the documents summoned by the Court.

Call on: 22/3/2018.

II Addl. Senior Civil Judge,
Hubballi.