

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE, & CJM
GADAG.**

**Present: Smt. Preeti Sadguru Sadarjoshi
(B.A., LL.B.)**

Prl. Senior Civil Judge & CJM., Gadag.

OS No.147/2015

Dated this the 13th day of June 2023

PLAINTIFFS:

1.Smt. Tarabai W/o Ishwarappa Manvi
Age: 100 Years, Occ:House hold work,
R/o Station Road, Opp to Gadag-
Betageri Muncipal Corporation, Gadag
and others

(By Sri.MSB Advocate)

- Vs -

DEFENDANTS:

1. Smt. Bharati W/o Ishwarappa Manvi
Age: 49 Years, Occ:House hold
R/o Shabad, Near Sharan Basaveshwar
Temple, Yadgiri District, Gulabaraga
and others

(By Sri BMS/PSR Advocate for D1

By Sri TVH Advocate for D3

D2-Ex-parte

Parties To I.A. No.XVI**APPLICANTS:**

1.Smt. Bharati W/o Ishwarappa Manvi,
Age: 49 Years, Occ:House hold
R/o Shabad, Near Sharan Basaveshwar
Temple, Yadgirti District, Gulabaraga
and others

**(By Sri BMS/PSR Advocate for D1
By Sri TVH Advocate for D3
D2-Ex-parte**

- Vs. -

OPPONENTS:

1.Smt. Tarabai W/o Ishwarappa Manvi
Age: 100 Years, Occ:House hold work,
R/o Station Road, Opp to Gadag-
Betageri Muncipla Corportion, Gadag
and others

(By Sri.MSB Advocate)

ORDERS ON IA.No.XVI

The learned counsel for defendant No.1 has filed
I.A.No.XVI U/o.16 Rule 6 R/W section 151 of C.P.C. to
issue summons to the person to produce documents
and give evidence.

2. The said application is accompanied by the affidavit of the defendant No.1 stating that, the plaintiffs have filed suit against the defendants for declaration and partition. When suit is posted for recording of evidence of plaintiff side, the plaintiff No.2 Smt. Sulochana died on 10-03-2020, in the year 1991, when partition is effected Smt. Sulochana has got her share in movable and immovable properties and she has enjoyed her share of properties till her death. She has kept her amount i.e., from her share of properties in her Bank Account and Bank locker. She has kept around 2 crore or more than that Gold ornaments, Diamond ornaments, Silver items in Bank of Maharashtra, Gadag Branch, Bailahogal Co-operative Gadag. After her death, present defendant No.2,3, plaintiff No.1 and 3 to 6 have taken the said amount of more than Rs.2 Crore, gold ornaments, diamond

ornaments, silver items from the said Account and Bank lockers of the above said Banks.

3. The said defendant No.2,3, plaintiff No.1,3 to 6 have given false information to the Bank Authorities and have produced false documents and received the said amount, golden ornaments, diamond ornaments and silver items.

4. The said amount and ornaments are the ancestral properties of the plaintiffs and defendants. Hence, it is necessary to issue summons and for the evidence of Manager of Maharashtra Bank Gadag and Manager of Bailahogal Co-operative Bank to produce the particulars of documents of statement of account with respect to deceased plaintiff No.2 Smt. Sulochana.

5. It is very much necessary to produce other particulars of documents of statement of

account regarding withdrawal of amount of more than Rs.2 crores, golden ornaments, diamond ornaments, and silver items.

6. After the death of plaintiff No.2, the defendant No.3 colluded with the plaintiff No.1, 3 to 6 and defendant No.2 with a plan to withdraw the said amount, golden ornaments, diamond ornaments and silver items from Banks. At the time of death of plaintiff No.2 i.e., on 10-03-2020 already in India Covid-19 has started slowly. Government of India has imposed lock down on 24-03-2020. At that time the defendant No.1 could not come out side and when she enquired with the Bank Authorities orally the Bank authorities have not given proper answer. Hence, the defendant No.1 prayed to allow the IA No.16.

7. Per contra, the learned counsel for plaintiffs has filed objections to IA No.16 contending

that, the application is not tenable in eyes of law or on facts of case. The defendant No.1 has not filed counter claim. The defendant No.1 has no any right to file this application and the application is devoid of merits and liable to be rejected. Without filing any independent suit regarding alleged movables of deceased this application is not tenable.

8. The averments made para No.2 to 6 of the affidavit annexed to application are false, the application do not speak anything about to whom the summons are issued. Hence, the plaintiffs prayed to dismiss application with exemplary costs.

9. Heard arguments of learned respective counsels on IA No.16.

10. Perused materials available on record.

11. The points that arise for consideration and determination are as under:-

- 1) Whether it is necessary to issue witness summons to witnesses as stated in IA No.16 to produce documents and to give evidence of 1) Manager, Bank of Maharashtra, Gadag Branch, 2) Manager Bailahogal Co-operative, Gadag to produce the particulars of documents of statement of account of deceased plaintiff No.2 Smt. Sulochana?
- 2) What order?

12. This Court answers above points as under:-

Point No.1 : In affirmative

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

REASONS

13. **Point No.1:** This is suit for declaration and for partition. It is specific case of the defendant No.1 that, after the death of Smt Sulochana, the plaintiff No.2, the defendant No.3 colluded with the plaintiff No.1,3 to 6 and the defendant No.2 hatched a plan to withdraw amount, golden ornaments, diamond ornaments and Silver items from Banks and that they

have succeeded. It is the case of the defendant No.1 that the said amount and ornaments are also joint family properties. In this regard, the defendant No.1 has filed additional written statement and taken contention that, the properties of Smt. Sulochana are the joint family properties. If application is allowed, no loss or hardship will be caused to other side.

14. On the other hand, if application is not allowed the defendant No.1 will be put to irreparable loss. Further it will lead to complications and multiplicity of proceedings.

15. On the other hand if application is allowed it will aid the Court for complete and final adjudication suit.

16. Further the plaintiffs will be given opportunity to cross-examine on this point. Hence, looking to facts and circumstances of case, this Court

deems fit to incline answer the point No.1 in affirmative. Accordingly, **point No.1 is answered in affirmative.**

17. **Point No.2**:- In view of foregoing discussions, this Court proceed to pass following:-

ORDER

The I.A.No.16 filed by the defendant
No.1 U/o.16 Rule 6 R/W Section 151 of
C.P.C. is allowed.

Issue summons to witnesses as stated
in IA No.16.

Under these circumstances no order as
to costs.

(Dictated to the stenographer, transcribed by her and corrected by me and then pronounced in the open Court on this the 13th day of June 2023)

(Smt.P.S.SADARJOSHI)
Prl. Senior Civil Judge and CJM
GADAG

