

IN THE COURT OF SENIOR CIVIL JUDGE AND J.M.F.C.
AT ARSIKERE

: PRESENT :

Smt. E. Chandrakala, B.Sc, LLB.,
Senior Civil Judge & JMFC,
Arsikere.

DATED ON THIS THE 19th DAY OF MARCH 2016

F.D.P. No.7/2007

Petitioner : Kashi V. Manjunatha
S/o Late Kashi Vishwanatha Shetty
P.A. Holder Veerananarayan S/o R.V.
Gopalakrishna, R/o Davanagere.
(By Sri N.S.S., Advocate)

-V/s-

Respondents : 1) Smt.K.V. Nagarathnamma,
W/o Kashi Vishwanatha Shetty,
R/o Arsikere and others.
(R-1 & 2 by Sri GAK, Advocate)
(R-3 by Sri P.N., Advocate)
(R-4 to 6 by Sri M.M.N., Advocate)
(R-7 by S.V.S., Advocate)

PARTIES TO I.A No.XXXIX

Applicant/
2nd respondent : K.V. Shivakumar

-V/s-

Opponent/
Petitioner : K.V. Manjunath

ORDER ON I.A.No.XXXIX

I.A.No.XXXIX filed by the applicant/2nd respondent under order 16 rule 6 r/w 151 of CPC praying for issue of direction to the petitioner to produce the documents such as audit report, income tax balance sheet, loan account extract and other documents as stated in the petition.

2. Per contra the petitioner and 3rd respondent filed objections.

3. I have heard the arguments on both sides.

4. I have perused the I.A., affidavit, objections and other material placed on record.

5. In the light of above material on record, the points that arise for my consideration are:

1) *Whether the applicant/2nd respondent made out sufficient reasonable grounds to allow I.A.No.XXXIX filed under order 16 rule 6 r/w 151 of CPC?*

2) *What order?*

6. My findings to the above points are as follows:

Point No.1: In the Negative

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

REASONS

7. **Point No.1:** It is stated in the affidavit of 2nd respondent that the petitioner has filed the petition for draw final decree as per the preliminary decree passed by this

Court in O.S.25/1994, dated 29.7.2000. It is further stated that the petitioner in the petition has alleged that the 2nd respondent has availed loan of Rs.45 lakhs and the petitioner has cleared all the loan availed by the 2nd respondent and thereby the 2nd respondent's mother executed documents in favour petitioner on 21.12.1999 and 22.12.1999. As such, the documents sought for by the 2nd respondent in the application is necessary to prove his case.

8. On the other hand, the petitioner contended that the 2nd respondent one or the other way is filing applications in order to protract the proceedings. The GPA holder of the 2nd respondent by name K.V. Prakash has taken back documents produced by him in O.S.5/2006. As such, the petitioner did not possess documents as sought for by the 2nd respondent and the application is liable to be dismissed.

9. The 3rd respondent in his objection statement has contended that the application is not maintainable in law and the same is filed only to protract the proceedings of the Court.

10. On careful perusal of the records, it reveals that the instant petition filed by the petitioner U/s 54 of CPC for declaration that he is the owner of the petition schedule property by virtue of the gift deed dated 21.12.1999. During the pendency of the suit, the parties to the petition have filed several I.As. one against another. The parties are impleaded in the petition. The petitioner has contended that he cleared

the loan availed by the 2nd respondent nearly to the tune of Rs.45 lakhs and in turn the 1st respondent with the consent of other respondents has gifted the petition schedule properties on 21.12.1999 in his favour. The 2nd respondent contended that he never borrowed loan of Rs.45 lakhs and the petitioner has not cleared the said loan. The petitioner in order to grab the petition schedule property has filed false petition.

11. It is to be noted that it is for the petitioner to who claimed declaration on the basis of document to prove by cogent and corroborative evidence in regard to allegations made by him in the petition. If the petitioner failed to prove the averments made by him, then the 2nd respondent can take benefit of it. As such, calling for the documents from the petitioner is not necessary. Moreover, the petitioner has stated that the GPA holder of 2nd respondent himself has taken back all the relevant documents produced in O.S.5/2006. The petitioner or the other parties have not possessed the documents sought for by the petitioner. It is to be noted that the 2nd respondent without proceeding with the matter has filed one or the other application in order to protract the proceedings. As such, I have reached to the conclusion that the documents sought for by the 2nd respondent is not necessary to prove their case and it is for the petitioner to prove the allegations made by him in the petition. Therefore, for the above reasons I do not find any sufficient grounds to allow the application. Hence I answer the above point in the Negative.

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

ORDER

I.A.No.39 filed by the applicant/2nd respondent under order 16 rule 6 r/w 151 of CPC is hereby dismissed.

There is no order as to costs.

(Dictated to the Stenographer, transcribed and typed by him, revised by me and then pronounced by me in the open Court on this the 19th day of March, 2016)

(E. Chandrakala)
Senior Civil Judge & JMFC,
Arasikere.