

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 26th 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.23, 26 and 27

Applicant/
7th respondent : Nagavishnesh S/o Shivakumar

-V/s-

Opponent/
Petitioner : K.V. Manjunath

ORDER ON I.A.No.23, 26 and 27

The applicant/7th respondent has filed I.A. Nos.23, 26 and 27 of CPC praying for recall of petitioner and respondent No.3 and seeking direction to the petitioner to produce the documents as stated in the application.

2. On the other hand, the petitioner resisted the applications by filing objections.

3. I have heard the arguments on both sides.

4. I have perused the I.As., affidavits, 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/7th respondent made out sufficient reasonable grounds to allow I.A.Nos.23 filed U/s 151 of CPC?*

2) *Whether the applicant/7th respondent made out sufficient reasonable grounds to allow I.A.Nos.26 filed U/s 151 of CPC?*

3) *Whether the applicant/7th respondent made out sufficient reasonable grounds to allow I.A.Nos.27 filed under order 16 rule 6 r/w 151 of CPC?*

4) *What order?*

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

Point No.1: In the Negative

Point No.2: In the Negative
Point No.3: In the Negative
Point No.4: As per final order
for the following:

REASONS

7. **Point Nos.1 to 3:** It is stated in the annexed affidavit of applicant that the petitioner has filed petition to draw final decree as per settlement made by him with some of the respondents. On the other hand, the petitioner has contended that the father of 7th respondent has admitted about the loan availed by him for the tune of Rs.45 lakhs and the same was discharged by the petitioner. Therefore, there is no need to produce the documents as sought for by the applicant.

8. This Court has allowed the I.As. and recalled PW.1 with a direction to the petitioner to produce the documents as sought for by the 7th respondent in I.A.27 vide order dated 17.12.2014.

9. The petitioner herein has preferred the writ petition before the Hon'ble High Court of Karnataka against the orders passed on I.As. on 17.12.2014. The Hon'ble High Court has set-aside the orders passed by this Court and the matter is remanded back to consider all the 3 applications afresh by giving opportunity to both sides. In view of the directions issued by Hon'ble High Court, heard the arguments on both sides on I.As.23, 26 and 27.

10. As per the discussion made by the Hon'ble High Court of Karnataka in writ petition order PW.1 is died. On perusal of the I.A.23, the 7th respondent has sought for recall of petitioner and in bracket it is mentioned as PW.1 and 3rd respondent. It is to be noted that PW.1 is no more and 3rd respondent has not been examined in the case. As such, the question of recall of PW.1 and 3rd respondent does not arise for consideration.

11. Further, I.A.27 filed by the 7th respondent was allowed earlier and direction was issued to the petitioner to produce the documents sought for by the respondents in the applications. In view of the orders passed by the Hon'ble High Court of Karnataka the orders passed by this Court was set-aside. Again, recently the 2nd respondents has filed similar application under order 16 rule 6 of CPC for issue of direction to the petitioner to produce same documents as sought for in I.A.27. The I.A.39 was dismissed on merits by coming into conclusion that it is for the petitioner to prove that he cleared loan of Rs.45 lakhs and entered into compromise with the other respondents and there is no need to issue direction to petitioner to produce documents as sought for by the 2nd respondent.

12. I.A.26 filed U/s 151 of CPC praying this Court to permit him to file I.A.No.27 i.e., under order 16 rule 6 of CPC. I.A.26 was allowed and permitted the 2nd respondent

to file I.A.27. As such, I.A.26 does not survive for consideration.

13. On overall perusal of the entire material placed on record, it goes to show that one Prakash was examined as PW.1 who is no more. Later on, the GPA holder of the petitioner was examined as PW.2. In the application it is sought for recall of PW.1. As I have stated above, the 3rd respondent has not examined in the case. Therefore, I do not find any sufficient reasons in I.A.No.23 to recall PW.1 and 3rd respondent.

14. In view of the above discussion and reasoning and in view of the orders passed by this Court on I.A.39, again this Court do not find any reasons to issue direction to the petitioner to produce the documents as sought for by the 2nd respondent. Hence, I answer the above point Nos.1 to 3 in the Negative.

15. **Point No.4:** In view of my findings on point Nos.1 to 3, I proceed to pass the following:

ORDER

I.A.No.23 filed by the applicant/7th respondent U/s 151 of CPC is hereby dismissed.

I.A.No.26 filed by the applicant/7th respondent U/s 151 is hereby dismissed.

I.A.No.27 filed by the applicant/7th
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 26th day of March, 2016)

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