

**IN THE COURT OF THE ADDL. CIVIL JUDGE
& J.M.F.C
AT HOLENARASIPURA**

PRESENT : Sri.Arun Chougule.,
B.A. LL.B.(Hons.)
Addl. Civil Judge and J.M.F.C.,
HOLENARASIPURA

Dated this the 9th day of October, 2017

O.S.NO.341/2013

Plaintiff/s :- M.Giddegowda S/o
Late Marigowda

(By Sri.R.D.R.Advocate)

-V/s-

Defendant/s:- Sri. Veerabhadrapa @ Rajappa
and another

(By D.1 to 2 Sri.M.K.D., D.3 by A.J.V
Advocates)

:: In IA.No.V::

Applicant/Plaintiff/s :- Sri.T.S.Shivalingappa
S/o Late Sannappa

-V/s-

Opponents/Defendant/s :- Javaramma W/o
Thirumalannaiah and others

ORDERS ON IA.No.V FILED BY THE PLAINTIFF**U/O.16 RULE 1(A), SECTION 151 OF C.P.C**

This is an application filed by the plaintiff under order 16 Rule 1(A), seeking assistance of this court to summon and order the person named in the application to give evidence on behalf of the plaintiff.

2. The plaintiff has sworn to an affidavit along with application stating that the person named in the application is owner of the land adjacent to the suit property. Hence, he intends to examine the said person as witness on his behalf and seeking order of this court to summon the said witness to give evidence on his behalf.

3. The defendants have filed written objections contending that the person named in the application is none other than son in law of the plaintiff and that the said person is not the owner of land adjacent to suit property. Hence, defendants prayed for dismissal of the application.

4. Heard both counsel and on perusal of the materials placed on record and after hearing counsel for both the parties, the following points arise for my consideration.

Point No.1:- Whether the application filed by the plaintiff under Order 16 Rule 1-A deserve to be allowed?

Point No.2:- What order?

5. My findings on the above points are as under:

Point NO.1:- In the Negative

**Point NO.2:- As per final order,
for the following:**

REASONS

6. **Point No.1:-** This is a suit for mandatory and permanent injunction and the plaintiff has filed the present application under Order 16 Rule 1-A seeking order of this court to summon the person named in the application to give evidence on plaintiff's side. Rule 1-A of order 16 of C.P.C being material, is reproduced here under. (**Rule 1-A Production of witnesses without summons.-subject to the provisions of sub-rule(3) of Rule 1, any party to the suit may, without applying for summons under Rule 1, bring any witness to give evidence or to produce documents.**)

7. R1-A provides that any party to the suit may bring any witness to give evidence or to produce documents with out applying for summons under Rule 1 In the present application the plaintiff has mentioned Rule 1(A) and seeking assistance of this court to summon and examine witness on behalf. R1(A) doesn't provide for issuance of summons to witnesses on the application of parties. Therefore, it appears that the plaintiff has mentioned wrong provision and the application would have been filed under sub rule(2) of Rule 1 of

Order 16 of C.P.C. This court is of the opinion that the present application cannot be dismissed merely on the ground of mentioning wrong provision. Hence, it is proper to consider the present application as one filed under sub rule(2) of Rule 1 of order 16 of C.P.C, in the interest of justice.

8. Rule 1 of Order 16 of C.P.C being material is reproduced here under

**“Rule 1. List of witnesses and summons to witnesses.-
(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.**

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.”

9. On a careful reading of Rule 1 it is clear that the parties have to file a list of witnesses on or before 15 days of framing issues. As per Sub rule (2) party-filing list of witnesses may apply for the court to summon any witness named in the list filed under Sub rule 1. As per sub rule (3), the court may summon any witness not mentioned in the list. By reading Rule (1) of order 16 it is clear that filing of list of witnesses on or before 15 days of framing issuance, or any time later with the permission of the court, is a condition precedent for seeking assistance of the court for summoning any witness to give evidence on behalf of the party applying for summons under the said rule.

10. Coming to the present case on hand the plaintiff has not filed list of witnesses to be examined on his behalf. The plaintiff has neither file any application seeking permission to file list of witnesses, but filed the present application seeking summons to witness which is not permissible in the absence of filing of list of witnesses. Hence, in the absence of list of witnesses court cannot issue summons to any person to give evidence on behalf of any party to the suit. Therefore, this court is of the opinion that the present application seeking assistance of this court to summon and examine the person named in the application cannot be allowed in the absence of list of witnesses. Hence, the point No.1 is answered in the negative.

11. **Point No.2:-** In view of my discussion on point No.1, this court has passed the following order:

ORDER

The IA.No.V filed by the Plaintiff under Order 16 Rule 1-A, R/w Section 151 C.P.C is hereby dismissed.

No order as to cost.

(Arun Chougule)
Addl. Civil Judge and JMFC,
Holenarasipura.