

OS 163 of 12 dated 19.08.2023

**ORDERS ON APPLICATION FILED UNDER ORDER 12 RULE 8
OF THE CODE OF CIVIL PROCEDURE BY THE PLAINTIFF**

The present application has been filed at the stage of cross examination of DW2.

1. The Plaintiff seeks a direction at the hands of the Court to the 2nd Defendant to produce a panchayath Palu Parikath dated 5.4.1979 and it is contended that on the said date there was a family partition and that the original of the said document is with the 2nd Defendant; that even earlier he had stated before the Court that the original of the said Parikath was with the 2nd Defendant and that this has been concurred even by the 1st Defendant in his written statement; that the 2nd Defendant by making a correction in the said document is unnecessarily harassing him and as such the document having a bearing on the present suit is required to be brought before the Court.

2. The 2nd Defendant would object to the said application contending that the same has been supported by a false affidavit and that instead of cross examining the witnesses, the Plaintiff is indulging in filing such an application only with an intent to drag on the matter; that even earlier the Plaintiff had filed a similar application under a different provision and that now the present application with a changed provision would not help the cause of the Plaintiff any further; that it is the Plaintiff who has with him the Parikath and which has been corrected by him and to hide the said fact a false application has been filed which requires to be rejected.

The 1st Defendant would contend that the matter has been remanded by the Appellate Court with a direction to the 2nd Defendant to lead his evidence; that during the course of cross examination the Plaintiff has confronted a Photostat copy of the said parikath instead of producing the original and that instead of securing the original from the 2nd Defendant the Plaintiff has

sought to get a Photostat copy of the document which ought not to be permitted and as such the application has to be rejected.

3. Sri HSA learned Advocate for the Plaintiff would contend:

a) that if the document is placed before the Court, it would resolve the dispute;

b) that the Defendants have admitted the partition and since the original was not available with the Plaintiff was the Photostat copy produced;

c) that the 2nd Defendant has made a partition amongst his sons which would indicate his admission of an earlier partition;

d) that the 1st Defendant has also admitted about the partition dated 5.4.1979;

e) that the entire dispute centers around one survey number;

f) that for the last 33 years there was no dispute but that a manipulation in the records is what has caused the present dispute

Sri RP learned Advocate for the 2nd Defendant would seek to point out that even earlier an application seeking similar relief was filed and the same was dismissed and the present application stands on no higher footing and as such deserves to be dismissed. Sri RDR learned Advocate for the 1st Defendant would submit that his

client has no objection if the original of a document, which would resolve the dispute, is placed before the Court, by whoever has its custody.

4. Having heard the learned advocates for the parties, the point that arises for my consideration is

Whether the Plaintiff has made out a case for directing the 2nd Defendant to produce the partition deed of 5.4.1979?

My answer to the aforesaid point is in the *Negative* for the following

REASONS

5. At the outset the invoking of Order 12 Rule 8 of the Code of Civil Procedure would have to be preceded by compliance of Order 12 Rule 8 of the Code which reads as under

Notice to produce documents shall be in Form No. 12 in Appendix C, (emphasis supplied by me) with such variations as

circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

Presently there is no material produced before the Court that such notice, in the manner prescribed, and as required under the provision was indeed given to the 2nd Defendant, for the Court to give a direction to the 2nd Defendant to produce the document that the Plaintiff so seeks. There is no recital in the affidavit of the Plaintiff as well that he has complied with the provisions of Order 12 Rule 8 of the Code. It is only after compliance of the provision and if the 2nd Defendant thereafter does not produce the same would further consequences, in the nature of drawing an adverse inference against the 2nd Defendant, follow. In the absence of compliance of the procedure, a direction at the hands of the Court to the 2nd Defendant cannot be issued. It needs to be further noted

that it is the specific case of the 2nd Defendant at para 4 of his objections that the original of the said document is with the Plaintiff. Therefore for want of compliance with the statute, the application of the Plaintiff would have to fail.

6. It is also to be seen that the Plaintiff had made an application on 16.7.2015 under Order 16 Rule 6 seeking a direction to the Defendants to produce the partition deed. My learned predecessor vide order dated 2.1.2016 had taken note of the objections filed by the 2nd Defendant then that the original was indeed with the Plaintiff and had held that there was no material placed by the Plaintiff that the original was with the Defendant 2 and had rejected the application. Even now it would have to be held that there is no material placed by the Plaintiff, except an averment and a change in the provision of law under which he has filed the application, to indicate that the original of the said document is with the Defendant 2.

There being no new grounds to revisit the earlier order and take a different view than that of my learned predecessor, I pass the following

ORDER

Application under Order 12 Rule 8 of the Code is dismissed. Call on 12.9.2023 to hear regarding the marking of the document.

CIVIL JUDGE HOLENARSIPURA