

**IN THE COURT OF CIVIL JUDGE AND JMFC  
AT HOLENARASIPURA**

Present:- Sri. **R.Mahesha**, B.A.L., LL.B,  
Civil Judge and J.M.F.C,  
Holenarasipura.

Dated this the 14<sup>th</sup> day of January, 2019

**O.S.No.203/2013**

Manjula and others : Plaintiffs

**(By Sri.A.S., Adv.,)**

V/s

Vijeyandra and others : Defendants

**(D1 & 2 By.Sri.K.K.R., Adv.,  
LRs of D1a to c By.Sri.K.K.R., Adv.,)**

**ORDERS ON IA-11 to 13**

Vijayendra Kumar : Applicant/plaintiff  
Dead by Lrs  
V.Arunkumar and others

V/s

Manjula & others : Defendants

**ORDERS ON IA-11 to 13**

The LRs of defendant No.1 has filed application i.e IA No.11 to 13 under order 18 Rule 17 of CPC and Section 151 of CPC and U/o 8 Rule 1(A) of CPC prays for reopen the case and recall of DW 2. for further examination and production of document.

2. In the accompanying affidavit of IA the LRS of defendant No.1 had sworn that he is a legal heir of defendant No.1. During his evidence

due to non securing of partition deed dated 30/07/2001 and Mutation extract could not possible to mark as exhibits. Now he securing the same partition deed as he intended to produce the same before the court. Hence he preferred the present application prays for recall of DW.2 evidence and production of documents. Hence prays for allowing the application.

3. The plaintiff filed objection to the present application. In the objection contending that the application is not maintainable either in law or in facts of the case. In the application the defendant stated that due to non-securing of document he could not able to produce the same. But in the written statement he specifically contending about partition. In order to grab the right of plaintiff, the defendant created the documents and intended to produce the same is not tenable. The present suit filed about 5 years back and since from he is not intended to produce the partition deed. In the present case, already completed trial and case posted for argument. If the application is allowed and permitted to defendant to lead further examination it will caused injuries to the plaintiff. Hence prays for dismissal of the application.

4. Heard the argument of both counsels.

5. The point that arises for my consideration is as follows.

**1. Whether the defendant No.1 has been made out good grounds to consider the present applications?**

**2. What order?**

6. I answer the above point is as follows.

**Point No.1:-** In the Negative

**Point No.2:** As per the final orders

for the following reasons.

**REASONS**

7. **Point No.1:-** :- I have perused the entire order sheet and record, it clear that the present suit filed for partition and separate possession and consequential relief. When case posted for defendant side evidence, he filed application seeking permission to proceed with the case through his son as GPA holder and same is allowed. Thereafter the GPA who is son of defendant No.1 filed his examination affidavit in lieu on 04/03/2016 and Ex.D1 to 4 got marked. Meanwhile the defendant No.1 died case posted for steps. Later the plaintiff filed necessary application to bring LR's of defendant No.1, same is allowed. The defendant counsel took several adjournments to lead DW.1 further chief evidence. Further LR's of defendant No.1 filed application seeking permission to production of document and same is consider and document taken on record imposing cost of Rs.200/- and thereafter, the plaintiff counsel cross examined DW.1, then case posted for defendant side further evidence. The defendant counsel examined witness on his behalf by filing necessary application. When case posted for cross of DW.2, the defendant counsel failed to keep DW.2 before the court in fixed date of hearing and this court provide sufficient opportunity to the defendant. Even though he failed to keep DW.2 for cross examination, hence this court closed defendant side evidence and case posted for arguments. The plaintiff counsel canvassed his argument and defendant counsel prays time for canvassing their arguments. In the meantime, the defendant preferred the present application seeking permission to recall of DW.1 and production of partition deed dated 30/07/2001 and MR 1/2001-02.

8. Now the present case posted for defendant side arguments. Both side evidences concluded. Now present applications have filed on behalf of defendant No.1 LR's as prayed in IA's. Upon careful perusal of

document (ವಿಭಾಗ ಪತ್ರ) vibhagaparthra dated 30/07/2001, it is unregistered document. Learned KKR counsel for the defendant canvassed his arguments that such document was even though unregistered. He has produced for collateral purpose, it can be received in evidence.

9. From the rival arguments of both advocates it is worth to looked into the above statute and Section before come to any conclusion-

**Section 17(1)(B) Registration Act 1908:**

(B) Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in failure, any right, title or interest, whether vested or contingent, of the value of one hundred rupees, and upwards, to or in immovable property:

**Section 49 in The Registration Act, 1908:**

Effect of non-registration of documents required to be registered - No document required by section 171 [or any provision of the Transfer of Property Act, 1882] to be registered shall-

- (a) affect any immovable property comprised therein or
- (b) confer any power to adopt or
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

10. Upon rival submission of both counsel and careful perusal of documents on record it is well settled principle of law the larger bench of **Andra Pradesh High Court in Chinappa Reddy Garimurthy Alias Reddy Vs. Chinnapp Reddy** and Hon'ble Supreme court of India referred same principles in the case **Yellappa Uma Maheshwari and others Vs. Buddha Jagadheeswara Rao and others SPL 12788/2014 and Civil Appeal No.844/15** held that the whole process of partition contemplates three phases i.e. severancy of status, division of Joint property by metes and bounds and nature of possession of various

shares. In a suit for partition an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds, an unstamped instrument is not in admissible in evidence, even for collateral purpose, until the same is impounded. If defendants wants to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded trial court has liberty to mark those documents for collateral purpose subject to proof and relevance.

11. It is pertinent to mention the Hon'ble Apex Court decision reported in **2013 AIR SCW 1564=[2013] 14 SCC 1 M/s Bagai Construction through its proprietor Mr. Lalit Bagai Vs/ M/s Gupta Building Material Store**

The Hon'ble Apex court observed that

"after change of various provision by way of Amendment in the civil procedure code it is desirable that the recording of evidence should be continuous and followed by argument and decision thereon within a reasonable time. This court repeatedly held that court should constantly endeavor of follow such a time schedule. if the same is not followed, the purpose of amending several provisions in the code would get defeated. In fact application for adjournment, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial court in order to overcome the lacunae in adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forwarded with such an application to avoid the final judgment against it.

Such course is not permissible even with the aid of Section 151 Civil Procedure Code".

It is well settled principle of law that under order 18 Rule 17 of CPC for production of evidence not previously known or the evidence which could not be produced despite due diligence. After conclusion of his evidence he has to satisfy the court that even after exercise of due diligence, the evidence was not within his knowledge and he could be produced before the court.

12. Further this court relied on the Hon'ble Supreme Court decision reported in **2011 (11) SCC 275 AIR SC (CIVIL) 1000 K.K.Velusamy Vs. N.Pallanisami**. The Hon'ble Apex court clearly held that under Order 18 Rule 17 of CPC the power inherent within that the court after fails the additional evidence or recalling witness or fresh evidence is necessary to determine the facts on issue. The court can exercise its jurisdictional power, at any stage of the proceedings or on notice of the purpose also the court can exercise its power if it is necessary to clarify the duty regarding evidence led by the parties. This power is not intended to fill up omission in the evidence of witness already examined.

13. Upon careful perusal of both side pleadings, it discloses that nowhere whispered about alleged vibhagapatra in their written statement. At the first instance defendant stated in IA and DW.2 sworn in an affidavit about "vibhagapatra" it is an unregistered document. By looking into the above facts in the background of Hon'ble Supreme Court view on the above point, it is not permissible to the court to entertain such document in the evidence. Even it is unstamped because there is no pleading in his written statement nothing will be forthcoming by producing before the court. Unless they take such a plea in his written statement if really three things taken place. He could definitely taken specific contention in their

pleadings. This court provides sufficient opportunity to led defendant side evidence, but he would not utilize the same. At this stage he has not made out very good grounds to consider the applications. Hence this court opinion to answer the **Point No.1 in the Negative.**

14. **Point No.2:** For the aforesaid discussion, I proceed to pass the following.

**::O R D E R::**

IA. No.11 to 13 filed by the LR's of defendant No.1 Under Order 18 Rule 17 of CPC and Section 151 of CPC and U/o 8 Rule 1(a) of CPC are hereby rejected.

No order as to costs.

(Dictated to stenographer, directly on computer, typed by her then revised and corrected by me then pronounced in the open court dated this 14<sup>th</sup> day of January, 2019)

(R.Mahesha)  
Civil Judge and J.M.F.C,  
Holenarasipura.