

KAHS710050972015



Presented on : 04-12-2015

Registered on : 04-12-2015

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

DATED: This the 31st day of August 2021

PRESENT : SRI.ANIL PRAKASH M.P. M.BA, LL.B.,
I/c Addl.Civil Judge & J.M.F.C,
Holenarasipura.

OS.No.336/2015

Plaintiff/s: T.A.Jayanna S/o Late Annajappa,
aged about 56 years,
R/o Tejuru village,
Hallimysore Hobli,
Holenarasipura Taluk.

(Rep. by Sri.J.U.R., Adv.,)

-VS-

Defendant/s: T.A.Puttaswamaiah S/o Late Annajappa,
aged about 66 years,
R/o Tejuru village,
Hallimysore Hobli,
Holenarasipura Taluk.

(Rep.by Sri.K.K.R., Adv.,)

ORDERS ON IA NO.IX

Applicant : T.A.Jayanna S/o Late Annajappa,

V/s

Opponent : T.A.Puttaswamaiah S/o Late Annajappa

ORDERS ON APPLICATION

Plaintiff has filed this application Under Order 16 Rule 6 of CPC to summon partition deed dated 12.12.1996 from State Bank of India situated at Hallimysore of Holenarasipura Taluk in the interest of justice and equity.

2. He has sworn to affidavit, wherein he has stated that defendant is his brother and they have partitioned their joint family properties as per partition deed dated 12.12.1996. Further he has mortgaged said partition deed and has obtained loan of Rs.7,00,000/- and in order to prove his case the said document is very essential and for that reason he requested the Bank official to hand over the document, but they have refused and has submitted that if court issues summons they can produced said document and for that reason he has filed this application.

3. On other hand the defendant has filed objection submitting that he had produced partition deed dated 18.06.2001 by paying deficit duty and penalty and till that day the plaintiff has not produced the partition deed dated 12.12.1996 and now he is falsely claiming that he has

pledged the same before Bank and has filed this false application.

4. Further if at all there is a partition as stated by plaintiff then he could have produce certified copy of same if it is registered and without producing the same he has filed this false application and for that reason submits to dismiss the application.

5. Perused both application and objection, the points that arises for consideration is as follows:

1. Whether the plaintiff has made out grounds for summoning of partition deed dated 12.12.1996 from State Bank of India Hallimysore Branch U/o 16 Rule 6 of CPC?

2. What order

6. Heard both side. I have answered point No.1 **in the Negative** for the following

:REASON:

7. **Point No.1:** The plaintiff has filed this suit for permanent injunction against the defendants wherein it is the contention of the plaintiff that he is a peaceful possession and enjoyment over suit schedule property as per unregistered partition deed dated 12.12.1996 and the same is contested by defendant by filing written statement wherein the defendant has denied the existence of partition deed dated 12.12.1996, but however whether there is a

partition as stated by the plaintiff has to be proved by production of document itself, but however the objection of the defendant is that the plaintiff could have produce certified copy of the document, but in the plaint it is clearly averred that the partition deed is unregistered and for that reason the question of producing the certified copy does not survive at all.

8. Further at this stage it is essential to extract order 16 Rule 6 of CPC:

Rule 6 - Summons to produce document: Any person may be summoned to produce a document, without being summoned to give evidence, and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

and by reading the above provision no doubt it is clear that the court can summon any person to produce document in his possession and for that reason this court has power to issue summons to the Bank for production of document, but at this stage it is essential to extract Section 130 of Indian Evidence Act:

130- Production of title-deeds of witness not a party.—No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the

production of such deeds or some person through whom he claims.

and the above provision it is very clear that court cannot issue summons to a person who is not a party to the suit to produce title deeds to any property, which such person holds such document as a pledgee or mortgagee and in this case it is not in dispute that the bank holds the partition deed in the capacity of pledgee or mortgagee and for that reason summons cannot be issued unless the bank has consented in writing and accordingly **Point No.1 answered in the Negative** and in view of the above discussion I proceeds to pass the following:

ORDER

The Application filed by the plaintiff

U/o 16 Rule 6 of CPC is hereby dismissed.

No order as to costs.

(Dictated to the stenographer directly on computer, computerized by her, corrected and then pronounced in the open court on this the **31st day of August 2021**)

(ANIL PRAKASH M.P.)

I/c Add. Civil Judge & JMFC,
Holenarasipura.