

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE &
JMFC., HIREKERUR**

PRESENT: Sri. Janardhana. S.K. B.A.L.,LL.B.,
Addl. Civil Judge & JMFC.,
Hirekerur.

O.S. No.299 of 2014

DATED THIS THE 04th DAY OF JANUARY 2021

Plaintiff : Nagavva W/o Mudiyaappa Talawara.

(By Sri. G.V. Kulkarni – Adv.)

V/s.

Defendant : Channabasappa S/o Veerappa Giriyala.

(By A.A. Elivala – Adv.)

PARTIES TO I.A. No.XIII

Applicant/

Defendant :

Channabasappa S/o Veerappa Giriyala,
R/o: Yattinahalli M.M. Tq: Hirekerur,
Dist: Haveri.

- V/s -

Opponent/

Plaintiff :

Nagavva W/o Mudiyaappa Talawara,
R/o: Yattinahalli M.M. Tq: Hirekerur,
Dist: Haveri.

(Sri. Janardhana. S.K.)
Addl. Civil Judge & JMFC.,
Hirekerur.

ORDERS ON I.A. No.XIII FILED BY THE
APPLICANT/DEFENDANT

The applicant/defendant has filed this application under Order 26 Rule 10-A R/w 151 of C.P.C. and U/s 45 of Indian Evidence Act seeking to refer the signatures of the plaintiff in plaint, accompanying affidavit and her signature in the affidavits annexed to the I.A. No.IX to XI for the scientific investigation by the hand writing expert.

2. The application is resisted by the counsel for the plaintiff by filing objections inter alia among various grounds.

3. I have heard the arguments of both the sides counsel and perused the materials available on record.

4. The points that would arise for the consideration of this court are as follows:-

POINTS

1. Whether the applicant has made out sufficient grounds to allow the application?

2. What order?

5. The findings of this court on aforesaid points are as follows:-

Point No.1 : In the negative.

Point No.2 : As per final order for following:-

REASONS

6. Points No.1:- The applicant/defendant in his accompanying affidavit annexed the application has

specifically deposed that the signatures of the plaintiff made in the plaint and in the accompanying affidavit, and affidavit filed in lieu of her examination in chief and those executed in the depositions are differ from those executed in the affidavits annexed to the I.A. No.IX to XI. Accordingly, the defendant has claimed to refer the signatures of the plaintiff as aforesaid for scientific analysis by the forensic Science Expert (Hand Writing Expert). It is further contented that himself put to loss and inconvenience if the application is not allowed and no injury and loss would caused to the plaintiff if application is allowed. On afore stated grounds the applicant has prays to allow the application.

7. The counsel for the plaintiff in the objections to the application has categorically contended that application filed by the defendant is not maintainable under the law and same was filed to protract the proceedings and take away the precious time of the court. It is further objected that the reasons set forth in the affidavit does not disclose how the comparison of the signatures of the plaintiff material for the purpose of adjudication of the suit. The application filed by the defendant seeking to refer the signatures of the plaintiff is totally misconceived. It is further objected that the application filed by the defendant seeking scientific investigation of signatures of the plaintiff has sought for in the application is comic in nature, the dispute only involves whether the transaction is of sale deed or of lease one since plaintiff has

not disputed her thumb impression in the alleged sale deed. Hence, application filed by the defendant seeking comparison of signatures not at all necessary. On afore stated grounds the counsel for the plaintiff prays to dismiss the application.

8. I have perused the application, its accompanying affidavit and objections thereto including other materials available on record. The plaintiff has filed the present suit seeking to declare that the sale deed dated 17-09-2014 obtained by the defendant with respect to suit schedule properties is fraudulent one and for consequential relief of permanent injunction to restrain him from peaceful possession and enjoyment of suit schedule property. It is alternatively sought for recovery of possession of suit schedule property if this court comes to conclusion that the plaintiff is not in possession of the suit schedule property.

9. The defendant applicant in his affidavit annexed to the application has sought for scientific investigation by the handwriting expert as to signatures put by the plaintiff in the plaint, in the affidavit filed in lieu of her examination in chief and those put in her deposition which are stated to differ from those signatures of the plaintiff executed in affidavit annexed to the I.A. No.IX to XI. Except stating that those signatures of the plaintiff contained in the plaint, affidavit filed in lieu of her examination in chief and those at depositions differ from those executed in the affidavits annexed to the I.A. No.IX to XI, the defendant/applicant has

not assigned any reasons and object behind seeking comparison of those signatures and identification of same by the hand writing expert. More over, on perusal of plaint, affidavit filed in lieu of examination in chief, in the deposition of the plaintiff and those of I.A. No.IX to XI clearly discloses that the plaintiff has put her thumb impressions. Hence, very relief claimed by the applicant seeking to refer the signatures of the plaintiff on aforesaid materials lacks clarity and not sustainable one. In addition, as stated earlier the applicant/defendant in her affidavit not stated any reasons, object or purpose to refer signatures or thumb impression of the plaintiff and how same is necessary for adjudication of suit. Hence, the application filed by the defendant seeking aforesaid reliefs does not survive for consideration.

Accordingly, point No.1 is answered in the negative.

10. Point No.2:- In the light of aforesaid reasons and discussions, this court is proceed to pass following:-

ORDER

I.A. No.XIII filed by the applicant/defendant U/o 26 Rule 10-A and U/s 45 of Indian Evidence Act is hereby dismissed.

(Dictated to Stenographer, typed by him, latter corrected and then pronounced by me in the open court on this the 04th day of January - 2021)

**Addl. Civil Judge & JMFC.,
Hirekerur.**

COMMON ORDERS ON I.A. No.IX and X and XII

The plaintiff has filed the I.A. No.IX U/s 151 of C.P.C. seeking to reopen the case to lead plaintiff further evidence, I.A. No.X U/o 18 Rule 17 R/w 151 of C.P.C and I.A. No.XII U/o 16 Rule 1 R/w 151 of C.P.C. seeking to file the witness list of the plaintiffs.

The counsel for the defendant has filed separate similar objections to I.A. No.IX and X and not resisted the I.A. No.XII.

I have heard the arguments of both the sides and perused the materials available on record.

4. The points that would arise for the consideration of this court are as follows:-

POINTS

1. Whether the applicant has made out sufficient grounds to allow the applications?

2. What order?

5. The findings of this court on aforesaid points are as follows:-

Point No.1 : In the affirmative.

Point No.2 : As per final order for following:-

REASONS

6. Points No.1:- The applicant/plaintiff in the affidavits annexed to the applications has commely deposed that this court was pleased to take the further evidence of plaintiff side as nil and thereby posted the matter for defendants evidence thereby prayed to reopen the case for the purpose of adducing plaintiffs further evidence by allowing the applications.

The applications are being resisted by the counsel for the defendant by filing similar objections to the I.A. No.IX and X, wherein the contents of application and affidavit have been denied as false, it is further objected that it is not permissible under the law for the plaintiff to adduce her further evidence when the case is set down for further defendants evidence, the witnesses sought to be examined by the plaintiff or not at all important for the purpose of adjudication of the suit. It is further stated that signatures of the plaintiffs contained in the affidavits annexed to the applications are not pertains to the plaintiffs. The plaintiff has filed the present applications to just harass the defendants and to protract the proceedings. On said urged grounds the defendant counsel has prayed to dismiss the applications with cost.

The plaintiff has filed the present suit against the defendant seeking to declare that sale deed obtained by the defendant from plaintiff is fraudulent one and for consequential relief of permanent injunction to restrain the

defendants from interfering with peaceful possession and enjoyment of the suit schedule property by the plaintiff and alternatively sought to recover the possession of the suit schedule property if court comes to conclusion that the defendant is in possession of the same.

Under I.A. No.IX the plaintiff has sought to reopen the case, for the purpose of to lead her further evidence by examining witnesses as per the list of witness filed along with I.A. No.XI. Admittedly, when the case is set down for further defendant evidence the plaintiff has filed the present application seeking an opportunity to adduce her further evidence by examining the witness produced along with the I.A. No.XII. It is contended by the plaintiff is that the examination of the witnesses much essential to prove her case. On the other hand, the counsel for the defendant has objected that examination of the witness by the plaintiff not at all essential for adjudication of the suit. Whether the witness sought to be examined by the plaintiff by reopening the case is relavent for the adjudication of matters in controversies to be decided on the merits on the case, it is premature to raise the objection that the witness sought to be examined by the applicant/plaintiff is not at all necessary unless same is examined before the court.

It is pertinent to refer that reasonable opportunities to be extended to the parties to put forth their case which is the fundamental principle of natural justice. The delay in

examining the witnesses by filing the these applications is not the technical ground to deny the plaintiff to examine the witness in her behalf. However, prejudice caused to the defendant by filing the these applications at the latest stage of the proceedings when the case is posted for further defendants evidence some how compensated by imposing the some reasonable costs. Accordingly, opportunity to be extended to the plaintiff to adduce her further evidence. Accordingly, point No.1 is answered in the affirmative.

ORDER

I.A. No.IX filed U/s 151 of C.P.C. seeking to reopen the case to lead plaintiff further evidence, I.A. No.X U/o 18 Rule 17 R/w 151 of C.P.C and I.A. No.XII U/o 16 Rule 1 R/w 151 of C.P.C. seeking to file the witness list of the plaintiff is hereby allowed.

Consequently, case is reopened to lead further plaintiff evidence and witness list of the plaintiff is taken on records.
For further plaintiff evidence. By
16-12-2020.

**Addl. Civil Judge & JMFC.,
Hirekerur.**

ORDERS ON I.A XI

I have heard the arguments of both the sides and perused the materials available on record.

4. The points that would arise for the consideration of this court are as follows:-

POINTS

1. Whether the applicant has made out sufficient grounds to allow the applications?

2. What order?

5. The findings of this court on aforesaid points are as follows:-

Point No.1 : In the affirmative.

Point No.2 : As per final order for following:-

REASONS

6. **Points No.1**:- The applicant/

(Order pronounced in the open
court vide separate order)

ORDER

I.A. No.IV filed by the
applicant/plaintiff No.2 U/o 1 Rule 10
is hereby allowed.

Consequently, the proposed defendants No.3 to 6 are hereby permitted to add as defendant No.3 to 6.

The plaintiff counsel is hereby directed to amend the plaint and furnish the amended plaint in terms of I.A. No.IV.

Addl. Civil Judge & JMFC.,
Hirekerur.