

**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.

(Def. A.A. Elivala – Adv.)

PARTIES TO I.A. No.XI

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.XI

The plaintiff has filed the I.A. No.XI U/o 16 Rule 5 & 7 R/w 151 of C.P.C., seeking to issue summons to one Sri. S.G. Kulakarni who said to be the deed writer who prepared the sale deed dated 17-09-2014 and same is alleged to have fraudulently obtained by defendant with respect to suit schedule property from the plaintiff.

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

3. 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 application?

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 his affidavits annexed the application has contended that the suit schedule

properties bearing Sy.No.7/1+3 measuring 12 guntas and Sy.No.8/4 measuring 6 guntas of land are in her possession as absolute owner. The defendant has fraudulently obtained the registered sale deed dated 17-09-2014 from the plaintiff and said document was being prepared by one Sri. S.G. Kulkarni, it is claimed that his evidence is much essential for complete adjudication of matters in controversies between the parties. It is further contended that no loss or injury would be caused to the defendant if the application is allowed. On the other hand, the plaintiff will be put to loss or injury if the application is rejected. On afore stated grounds, the applicant has prays to allow the application.

7. The application resisted by the counsel for the defendant by filing objections wherein the contents of application and affidavit are 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 and the witness sought to be examined by the plaintiff is not at all important for the purpose of adjudication of the suit. It is further stated that signatures of the plaintiff contained in the affidavits annexed to the I.A. No.IX to XI are not that of plaintiff. 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 prays to dismiss the application with costs.

8. 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 recovery of possession of the suit schedule property if court comes to conclusion that the defendant is in possession of the same.

9. Admittedly, when the case is set down for further defendant evidence, the plaintiff has filed the present application seeking to issue summons to one Sri. S.G. Kulakarni who said to be the deed writer and prepared the alleged and disputed Ex.P3 sale deed said to had been fraudulently obtained by the defendant. The plaintiff has specifically alleged that the defendant has obtained the sale deed from the plaintiff with respect to suit schedule property by playing fraud. The plaintiff has specifically averred in his plaint that since she is aged and not able to cultivate the suit schedule property same was given to defendant based on lease. Subsequently, the defendant by assuring and misrepresenting the plaintiff to execute the lease deed with respect to the suit schedule property has fraudulently obtained the registered sale deed dated 17-09-2014 with the collusion of another person by name Sri. Bharamappa Doddamani. The plaintiff has further averred that the

defendant has fraudulently concocted the alleged sale deed thereby alleged the fraud on the defendant. Accordingly, in order to prove the fraud in obtaining the sale deed with respect to suit schedule property, the applicant/plaintiff has sought to examine the scribe to the alleged sale deed one Sri. S.G. Kulkarni thereby sought to issue the summons to him.

10. Since the matter in dispute involves the alleged fraudulent act on the part of the defendant in obtaining the fraudulent sale deed by falsely misrepresenting the plaintiff to execute the lease deed and as the defendant has denied the alleged fraudulent act, the burden is upon the plaintiff to prove the said fraud. Hence, prayer sought for by the plaintiff seeking to examine the scribe to the Ex.P3 sale deed, it is necessary to examine him in order to complete and proper adjudication of matter in issue involved between the parties. It is true that the plaintiff has filed this application at the later stage of the proceedings when the case is actually set down for further defendant evidence. Mere delay in examining the witness in support of plaintiff case is not the ground to reject the application. However, prejudice caused to the defendant in examining the witness at the latest stage of the proceeding can be compensated by imposing some reasonable costs. Being the examination of scribe to the disputed sale deed is essential for the proper adjudication of the suit and in order to avoid the multiplicity of proceedings, it is just and necessary to allow the application. The applicant ought to have filed the

application seeking issue of summons U/o 16 Rule 1(2) of the C.P.C., instead of Order 16 Rule 5 and 7 of C.P.C. It is settled law is that mere wrong coating of provisions of law is not a ground to reject the relief's sought for in the application. Hence aforesaid reasons, **Point No.1 is answered in the affirmative.**

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

ORDER

I.A. No.XI filed by the plaintiff U/o 16 Rule 7 R/w 151 of C.P.C. is hereby allowed on cost of Rs.200/-.

Issue summons to one Sri. S.G. Kulakani who is the scribe to the Ex.P3 sale deed if correct address is furnished and witness fees to defray his traveling and other expenses is fixed at Rs.200/-.

For further plaintiff evidence.
By 28-01-2020.

(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.**

(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.