

**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.149 of 2017

DATED THIS THE 18th DAY OF JUNE - 2021

Plaintiffs : Madivalappa S/o Adavibasappa Madivalar
and three others.

(By Sri. V. N. Madivalar – Adv.)

V/s.

Defendants : Kalaveeranagouda S/o Doddagouda Patil @
Halegoudra, and two others.

(Def., No.1 by Sri. S. H. G. – Adv.)

(Def., No.2 & 3 Exparte)

PARTIES TO I.A. No.XVI to XVIII

Applicants/

Plaintiffs : Madivalappa S/o Adavibasappa Madivalar
R/o: Shreeramanakoppa, Tq: Hirekerur,
Dist: Haveri.

- V/s -

Opponents/

Defendants : Kalaveeranagouda S/o Doddagouda Patil @
Halegoudra, R/o: Shreeramanakoppa,
Tq: Hirekerur, Dist: Haveri.

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

COMMON ORDERS ON I.A.NO.XVI to XVIII

The defendant No.1/applicant has filed I.A. No.XVI U/s 151 of C.P.C., seeking to reopen the case, I.A. No.XVII U/o 18 rule 17 read with 151 of C.P.C., and I.A. No.XVIII U/o 16 rule 6 & 7 read with 151 of C.P.C., by praying to issue summons to the Assistant Executive Engineer, Panchayat Raj Sub-division, Hirekeuru to produce the documents of measurement with respect to Shreeramkoppa lake and its bund situated in Sy.No.127 and adduce the evidence in that behalf.

2. The counsel for the plaintiffs has submits no objections to allow the applications. Since the defendant No.1 has sought to issue summons to the Official of Government Department, this court has proceeds to determine the application on merits on the ground that whether witness sought to be summoned and examined is material witness or not.

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

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

POINTS

1. Whether the applicant has made out sufficient grounds to allow the I.A. No.XVI to XVIII?

2. What order?

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

Point No.1: In the Affirmative.

Point No.2: As per final order following:

REASONS

6. **Points No.1:-** The applicant/defendant No.1 in the affidavits annexed to the instant applications as specifically deposed that since he has been involved in the agricultural works he could not able to give proper instructions to his advocate to lead further evidence on his behalf, the suit schedule property bearing Sy.No.127 is a Government lake situated at Shreeramkoppa Village which consists of lake bund and with respect to which the concerned Assistant Executive Engineer of Public Works Department has issued certificates by measuring the extent of said lake and its bund. In spite of personal attempt to secure the said witness to adduce evidence in this regard, the said witness instructed him to adduce his evidence only upon issue of summons by the court. On aforesaid ground, for complete and proper adjudication of the suit the applicant has prayed to reopen the case and recall him to adduce his further evidence by issue of witness summons to Assistant Executive Engineer of P.W. Department for the purpose of examination before the court and production of documents by allowing the applications.

7. I have perused the applications, accompanying affidavits and all other materials available on record. The plaintiff has filed the present suit against the defendant No.1, to 3 for the relief of permanent injunction to restrain the defendants or anybody acting under them from interfering with the peaceful possession and enjoyment of the suit schedule “DLK” portion. The applicant/defendant No.1 has filed instant applications seeking to issue summons to the Assistant Executive Engineer of P.W. Department, Hirekerur by calling upon to produce the documents with respect to measurement of Shreeramkoppa lake bearing Registration No.127 and its lake bund by reopening the case and recall him to adduce his further evidence by claiming that examination of said official on behalf of him is very much essential for complete and proper adjudication of the suit.

8. In the aforesaid context, I have perused the pleadings of the both the sides available on record. On perusal of the same, it is disclose that the plaintiffs by asserting that suit schedule “DLK” portion is a form a part of land in Sy.No.132 and by denying the existence of any road over the “DLK” portion have filed this suit for permanent injunction to restrain the defendant or anybody acting under from carrying tractor, cart, agricultural implements and cattle by way of illegal encroachment. The defendants property admittedly belongs to eastern side of plaintiffs land, have specifically asserted in their written statement that, the alleged “DLK” suit schedule portion

is the lake bund in Sy.No.127 situated at Shreeramkoppa Village which has been used by the defendants including public in general from their ancestral period to reach their respective lands. Such being the situation, it is alleged that the plaintiffs have allegedly installed the wire fence over alleged "DLK" lake bund so as to restrain the defendants from using the said road. In the written statement, it is specifically stated that the said Shreeramkoppa lake is belongs to the authority and maintenance of the Assistant Executive Engineer, the Panchayat Raj Engineering Sub-division, Hirekerur who said to have measured the extent of Shreeramkoppa lake in Sy.No.127 and the length and width of the said lake bund and issued the certificates to that effect.

9. On perusal of the aforesaid facts asserted in the plaint and denials in the written statement, it is forthcoming that, plaintiff has denied the very existence of bund road over "DLK" portion and thereby asserted that same is belongs to their absolute ownership and possession and same is part of their Sy.No.132. At the same time, the plaintiffs have asserted the existence of alternative way to the defendants to reach their lands in Sy.No.128 through "QPYXNOZ" lettered hand sketch way said to exist towards eastern side of defendants land in Sy.No.128. On the other hand, the defendants by denying the said assertions of the plaintiff has specifically raised the defense as to existence of road over the Shreeramkoppa lake bund which is a "DLK" disputed portion over which plaintiffs

have been claiming absolute ownership and possession. Since plaintiffs have specifically denied the existence of lake bund way and the defendants in their written statement has specifically asserted the factum of existence of same by using from their ancestors period and measurement of the same by the Assistant Executive Engineer of P.W. Department, Hirekerur, his evidence before the court by producing the necessary documents in that regard play a vital role to decide the facts in issues between the parties effectively. Hence, said witness sought to be examined by the defendants praying to issue summons to him is very much necessary. More over, plaintiffs counsel has submits no objection to allow the said applications. In view of the same, applications filed by the defendant No.1 seeking to reopen the case, recall the defendants to adduce their further evidence to issue summons to witness are deserves to be allowed.

10. It is pertinent to refer that the defendant No.1 has already examined himself as DW.1 and adduced the documentary evidence on his behalf. Subsequently, he has been cross-examined by the defendant counsel on 11-11-2020. On the same date, the defendant No.1 has closed his side and accordingly case is set down for the plaintiff side arguments. The defendant No.1 himself has closed his side without adducing his further evidence. Hence, when the case is set down for the plaintiff side arguments the present applications have been filed seeking to issue summons to witness by

reopening the case. The defendant No.1 is not diligent in adducing his further evidence at earliest opportunity and himself closed his side which implies that he has no further evidence to lead on his behalf on earlier occasion. Having applicant/ defendant No.1 once voluntarily closed his side and subsequently filed these applications seeking to opportunity to adduce the further evidence clearly shows his mala fide conduct and lack of diligence to proceed with the suit and same shall be strictly dealt with by imposing reasonable cost in embracing the court proceedings. At the same time, the witness sought to be summoned by the applicant being essential witness, mere lack of diligence and mala fide conduct of the defendant No.1 in filing these applications at the later stage shall not be ground to reject the applications. The principle of natural justice implies that the reasonable opportunities should be extended to the parties to put forth their case. **Accordingly, Point No.1 is answered in the Affirmative.**

11. Point No.2:- In the light of said discussions, this court has proceeds to pass following:-

ORDERS

I.A. No.XVI filed U/s 151 of C.P.C., by seeking to reopen the case, I.A. No.XVII U/o 18 rule 7 seeking to recall the defendant No.1 to lead his further evidence and I.A. No.XVIII U/o 16 rule 6 & 7 of C.P.C., are hereby allowed on cost of Rs.200/-.

Consequently, case is reopened to lead further evidence of defendant No.1.

The defendant No.1 is to deposit the cost of Rs.200/- before T.L.S.C., Hirekerur.

Further, office is hereby directed to issue witness summons to the Assistant Executive Engineer of P.W.D. Department, Hirekerur by calling upon him to produce the documents pertaining to Shreeramkoppa lake situated in Sy.No.127 and to give evidence in this behalf.

(Dictated to the Stenographer, directly typed by him on computer, and later initialed by me and then pronounced by me in the open court on this the 18th day of June – 2021)

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

(Order pronounced in the open
court vide separate order)

ORDER

I.A. No.XVI filed U/s 151 of C.P.C., by seeking to reopen the case, I.A. No.XVII U/o 18 rule 7 seeking to recall the defendant No.1 to lead his further evidence and I.A. No.XVIII U/o 16 rule 6 & 7 of C.P.C., are hereby allowed.

Consequently, case is reopened to lead further evidence of defendant No.1.

Further, office is hereby directed to issue witness summons to the Assistant Executive Engineer of P.W.D. Department, Hirekerur by calling upon him to produce the documents pertaining to Shreeramkoppa lake situated in Sy.No.127 and to give evidence in this behalf.

Further defendants evidence finally by 23-07-2021.

Addl. Civil Judge & JMFC.,
Hirekerur.

Perused the office note and order of Hon'ble High Court of Karnataka, Dharawada bench in Criminal Petition No.102690 of 2017 filed by the petitioner/accused No.7 wherein the Hon'ble High Court Dismissed the petition.

Accused persons and their respective counsels are absent. In view of S.O.P of Hon'ble High Court of Karnataka dated 21-05-2021, the litigants are prohibited from entering the court premises. Hence, Call on by 31-07-2021.

Addl. Civil Judge & JMFC.,
Hirekerur.