

IN THE COURT OF CIVIL JUDGE & JMFC., SHIGGAON.

: PRESENT:

MISS.NASRAT MUKHTAR AHMED KHAN, B.A. LLB, LL.M
CIVIL JUDGE & JMFC., SHIGGAON.

ORIGINAL SUIT No.81/2017

DATED ON THIS THE 29th DAY OF MAY-2023

Plaintiffs : 1.Thippanna Dyamanna Talavar
Aged about 70 years, Occ: Agriculture
R/o Panigatti, Shiggaon,
Dist: Haveri

2. Smt. Shantavva w/o Thippanna Talavar
Age: 65 years, Occ: Household
R/o Panigatti, Shiggaon,
Dist: Haveri

[By Sri.S.K.A., Advocate]

V/s

Defendants: 1. Nagappa Veerappa Honnalli
Aged about 80 years, Occ: Agriculture
R/o Panigatti, Shiggaon,
Dist: Haveri

(Dead by LRs)

1(a) Smt. Shankravva w/o Basanagouda
Hudeda @ Veerpanagouda
Aged about 60 years, Occ: Household
R/o Mattigatti, Tq: Kundgol,
Dist: Dharwad

1(b) Smt. Rathnavva w/o Dharmappa
Gandudi
Aged about 58 years, Occ: Household ,
R/o Ganjigatti,,
Tq: Shiggaon, Dist: Haveri

1(c) Smt. Susavva w/o Basanagouda
Marigoudra
Age: 56 years, Occ: Household,
R/o Shishuvinahal, Tq: Shiggaon
Dist: Haveri

1(d) Smt. Lakshnavva w/o Veeranagouda
Byaligoudra
Age: 44 years, Occ: Household
R/o Panigatti, Shiggaon,
Dist: Haveri

2. Veerappa Nagappa Honnalli
Age: 50 years, Occ: Agriculture
R/o Panigatti, Shiggaon,
Dist: Haveri

3. Basavanneppa Nagappa Honnalli
Age: 45 years, Occ: Agriculture
R/o Panigatti, Shiggaon,
Dist: Haveri

4. Shekappa Nagappa Honnalli
Age; 43 years, Occ: Agriculture

R/o Panigatti, Shiggaon,
Dist: Haveri

[By Sri C.B.P Advocate]

PARTIES TO I.A.No.XI & XII

Applicants : 1.Thippanna Dyamanna Talavar
(Plaintiff) Aged about 70 years, Occ: Agriculture
R/o Panigatti, Shiggaon,
Dist: Haveri

2. Smt. Shantavva w/o Thippanna Talavar
Age: 65 years, Occ: Household
R/o Panigatti, Shiggaon,
Dist: Haveri

V/s

Opponents : 1. Nagappa Veerappa Honnalli
(Defendant) Aged about 80 years, Occ: Agriculture

(Dead by LRs)

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Dist: Haveri

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Age: 45 years, Occ: Agriculture
R/o Panigatti, Shiggaon,
Dist: Haveri

4. Shekappa Nagappa Honnalli
Age; 43 years, Occ: Agriculture
R/o Panigatti, Shiggaon,
Dist: Haveri

COMMON ORDER ON I.A.No.XI & XII

Plaintiffs have filed IA.XI under Section 151 of CPC.,
praying this Court set aside the order dated 06.02.2023 for
arguments and permit the plaintiff to lead further evidence

and has filed IA.XII under Order 16 Rule 1 and 2 R/w Section 151 of CPC., to issue summons to the witness ie., Panchayath Development Authority PDO, Kyalkond to lead evidence in this case.

2. The plaintiff no 1 has filed an affidavit accompanying said IAs averring that, the present matter was posted for arguments on 06.02.2023 and it is necessary for the plaintiff to lead further evidence and thereby it is necessary to set aside the stage of arguments and permit the plaintiff to lead further evidence. Further the said 2nd plaintiff i.e., his wife is been granted with house under Basava Vasati Yojana and the PDO of Kyalkond Gram Panchayat has done spot inspection and GPS in said place and they have laid the foundation of the house in the said land and said authority have verified the building and credited the amount of construction in the account of his wife and regarding all this matter, the PDO of Gram Panchayat needs to lead evidence and it is necessary for the determination of the matter at hand and if the said applications are allowed no such hardship will be caused to the other side and on the other hand if the said applications are rejected they would be put to great hardship and hence, pray the Court to allow said applications.

3. The defendants counsel has filed common objection to said IA.No.11 and 12 and denies the plaintiffs averment and contends that , said applications are not maintainable and the plaintiffs have not stated the name of witnesses and their address or enclosed with the list of witness . Further it has not been made clear whether he wants to issue summons to the present PDO or the past PDO and if the said applications are allowed it would delay the matter and further the present matter is already posted for arguments and lot of opportunities have been given by the Court but, the plaintiffs have simply filed these applications to drag the matter and to harass the defendants. Further the property in which plaintiffs are constructing the house and the Ashraya house property are different and thereby, pray the Court to reject said applications.

4. Heard both and perused the materials on record.

5. On perusal the following points arise for my consideration.

POINTS

1. Whether the plaintiffs have made out the ground to allow IA.No.XI & XII?
2. What order?

6. On perusal of materials on record and after hearing the arguments canvassed by both, my findings for the above points are here under:-

Points No.1 : In Affirmative

Points No.2 : As per final order for the following:

REASONS

7. Points No.1:- The plaintiffs have filed present applications to permit the plaintiffs to lead further evidence and to issue summons to PDO of Kyalkonda stating that, said PDO Kyalkonda has done spot inspection of the house granted under Basava Vasati Yojana to Plaintiff No.2 and PDO has done GPS and has also inspected the spot and verified the construction of the foundation of the house and has credited the amount to the plaintiff's wife's account. On perusal of the plaint it appears that, the plaintiffs have taken the contentions in their plaint that, the plaintiff no.2 has been granted with the house under Basava Vasati Yojana and plaintiff has laid foundation and regarding the said aspect the present applications are filed stating that, PDO has inspected said spot and hence in order to determine the matter effectively and fully it is necessary to call the said witness. Though the defendants have taken up objection that, no

separate list have been enclosed and the name and address of the witness is not written it can be seen that, the plaintiffs have specified that, the summons have to be issued to PDO Kyalkonda. Though it can be seen that, said applications are filed at the stage of arguments, to balance the scales of justice said applications can be allowed by imposing the costs. Hence considering the discussion made above, Point No.1 is answered in Affirmative.

8. Point No.2 :- In view of the discussion made above, I proceed to pass the following:

ORDER

IA.No.XI filed by the plaintiffs under Section 151 of CPC and IA.No.XII filed by the plaintiffs under Order XVI Rule 1 and 2 r/w Section 151 of CPC are hereby allowed on cost of Rs.800/-.

Sd/-
(NASRAT MUKHTAR AHMED KHAN)
CIVIL JUDGE & JMFC.,
SHIGGAON.