

**IN THE COURT OF SENIOR CIVIL JUDGE ALAND**

**PRESENT**

**SRI.GANAPATI GURUSIDDA BADAMI., B.A. LLB (Spl)**

**SENIOR CIVIL JUDGE ALAND**

**DATED THIS 01<sup>st</sup> DAY OF JULY 2019**

**O.S. No.33/2014**

Sharanbasappa S/o Ambaraya Karahari & another; ....Plaintiffs

V/s

Sayabanna S/o Chanmalappa Karahari & others ...Defendants

**:-ORDER ON I.A.No.8 UNDER ORDER VIII RULE 1(A)(3) OF  
CPC:-**

Defendant No.4 has filed this application seeking permission to produce list of documents.

2. In the accompanying affidavit of the defendant No.4, he has stated that, this case is posted for evidence and he is producing certain documents along with list and said documents are public documents and there is no doubt in respect of their truthfulness and said documents are important for adjudication of matter. He has stated that, if he is permitted to produce list of documents, no kind of loss or hardship will be caused to other side and on the contrary, he will be put to heavy and irreparable loss. Therefore, he prayed to allow the application.

3. Plaintiff has filed objections to the application contending that, the document in question now sought to be produced is at

belated stage and plaintiff had no opportunity to meet out this document. It is also contended that, the document in question is purely a partition deed effecting the partition on the day when it is reduced into writing which requires compulsory registration and it has not been registered and not admissible in evidence. The question of admissibility of those documents may be decided before proceeding further with the matter. Therefore, it is prayed to dismiss the application.

4. Heard the learned counsel for defendant No.4 and learned counsel for plaintiff on the application and perused the materials on record.

5. Materials on record disclose that, plaintiff has filed this suit against the defendants seeking the relief of partition and separate possession of share in the suit schedule properties and declaration that, sale deed is not binding. The defendant No.4 has filed written statement and after framing issues, plaintiff side evidence has been recorded and matter has been posted for defendant side evidence. The defendant No.4 has filed this application along with list of documents and said application has been strongly opposed by the plaintiff on the ground that, partition deed is unregistered and it is liable to be impounded for payment of stamp duty and penalty and it requires compulsory registration. It is contended by

learned counsel for plaintiff that defendant No.4 has produced palupatti written in Kannada language and it is proper to bring out the meaning and nomenclature of document may be looked into. He has submitted that, one partition has been effected and reduced into writing on that day and second category partition already effected in past and later on, it was reduced into writing and said document is dated 14.05.2000 and it is written on the stamp paper of Rs.20. He has also argued that, partition deed effecting the partition by metes and bounds shall be liable to the stamp duty and penalty and its admissibility is to be decided and under section 35 of Karnataka Stamp Act, said document requires valuation from Sub-Registrar.

6. Learned counsel for defendant No.4 has contended that, defendant No.4 is son of defendant No.1 and plaintiffs are said to be sons of defendant No.2 and 3 and against father, brother and sisters and purchaser, this suit has been filed and plaintiff No.2 is claiming to be first wife of defendant No.3 and plaintiff No1 is son of first wife and defendant No.1 is father of Ambaraya and grandfather of plaintiff. He has also submitted that, defendant No.4 has filed written statement and contended that, there was partition on 15.04.2000 and partition deed was written on stamp paper and said document is styled as memorandum of partition

and it bears the signatures of parties.

7. The defendant No.4 wanted to produce some documents in support of his case. Though it is contended that, application is not maintainable for non payment of stamp duty and penalty on the unregistered and unstamped Palupatti, the question regarding admission of said document will be considered at the appropriate stage of recording the evidence and Court will decide regarding stamp duty and penalty at the time of admission of document. Because, the production of document is different than marking of document in evidence and marking of documents ministerial act and admissibility of document is judicial act which has been held in the decision reported in **Krishna V/s Sanjeev ILR 2003 KAR 3716** and regarding payment of stamp duty and penalty, necessary separate order will be passed at the time of admissibility of the said documents and the contentions urged in the objections will be considered at the time of admissibility of the document and decision relied by the learned counsel for plaintiff on the admission of Palupatti will be considered while marking the documents. So, I feel it is just and proper to permit the defendant No.4 to produce the documents subject to proof. So, I proceed to pass the following:-

**ORDER**

**IA No.8 under Order 8 Rule 1(A)(3) of CPC is hereby allowed and defendant No.4 is permitted to produce the list of documents subject to proof.**

*(Typed by me on Laptop, corrected, and then pronounced by me in open Court, on this the 01<sup>st</sup> day of July 2019).*

**(GANAPATI GURUSIDDA BADAMI)**  
*Senior Civil Judge Aland*