

IN THE COURT OF PRL.CIVIL JUDGE AND JMFC.,
SOMWARPET

Present:

Sri K GOPALA KRISHNA,
B.A.L., L.L.B.,
Prl. Civil Judge and JMFC., Somwarpet

Dated: 16th Day of February, 2024

O.S.NO.26/2019 & O.S.No.82/2019

Plaintiff : Sri. H.N.Subbappa & others.

V/s

Defendants : N.R.Subbappa.
Since deceased by Lrs & others

IA No.6

Applicant : Sri. N.S.Paramesh.

V/s

Respondents : Sri. H.N.Subbappa & others.

ORDERS ON IA NO.VI APPLICATION FILED BY
THE PLAINTIFF NO.2 UNDER ORDER XVI RULE 6
R/W/SECTION 151 OF CPC

The plaintiff No.2 has filed this application under order XVI Rule 6 r/w/sec 151 of CPC., praying this court to be pleased to summon to defendants to produce produce the original partition deed dated.13.08.1995.

2. The plaintiff has filed affidavit and contended that this is suit filed by the plaintiff against the defendants for the relief of declaration and Permanent injunction in respect of the suit properties. The plaintiffs are in possessing and enjoyment of the suit schedule property of Sy.No.84 measuring 0.46 acres of Nandigunda village and defendants are in possession and enjoyment of 0.24 acres in Sy.No.40/6 of Nandigunda village, since the year 1990. The said possession and enjoyment is as per oral exchange of properties. The said exchange of Properties is reflected in the family partition Mahazar of the defendants which is dated 13.08.1995. And the said factum of exchange is recited in the partition Mahazar dt. 13.08.1995 which relates to the Division of family properties of the defendants. The 1st defendant Sri. N.N.Puttaswamy has produced certified copy of the said partition Mahazar before the Gowdalli VSSN Bank Niyamitha to avail loan. Hence plaintiff fairly and honestly feel that the said original partition Mahazar dated 13.08.1995 is within the possession of the 1st defendant. Hence as a measure of caution and care of the plaintiff prays to 1st defendant and all the defendants to produce the said original partition Mahazar dated

13.08.1995 before the court to ascertain full truth. Since in one of the paras of the said Mahazar it s clearly recited about our exchange of properties. The production of the said document, is just and necessary to meet the formalities of procedural law. Further contended that the plaintiff No.2 that in the event of defendant's failure to produce the said family settlement Mahazar dated 13.08.1995, the plaintiff would be able to proceed on the strength of secondary evidence asper law, hence plaintiff No.2 constrained produce original Will before the court and prays to allow this application.

3. The defendant No.2 has filed objection. He has contended that the application are not maintainable either under law or fact of the case liable to be dismissed. The reason narrate in the affidavit filed in support of the application are not genuine and on this ground liable to be rejected. No such document alleged to be original family partition Mahazar/deed dated 13.08.1995 which relates to partition of plaintiffs family properties is in possession of the plaintiff in this case. As there is no partition taken place in the plaintiff's family in respect of their properties until this date the existence of the said partition mahazar

as mentioned in the said application is utterly false. And When this being the case the production of the alleged original family partition mahazar dt.13.08.1995 does not arise. The intention on the part of the plaintiff in filing these applications is only to prolong the case causing all sorts of inconvenience on the part of the defendant. No such document mentioned above is in possession of any of the defendants. This application is filed on imaginary grounds. If the application as allowed great prejudice and hardship will be caused to the defendants but no prejudice and hardship will be caused to the plaintiffs if this application is dismissed the IA on heavy cost.

4. Heard arguments.

5. In light of the above contentions, the infra points that would arise for my consideration.

1. Whether the plaintiff No.2 has made out the grounds to allow the application?

2. What order?

6. My findings on the above points are as under:

Point No.1: In the **Negative**

Point No.2: As per final order for the following;

::REASONS::

7. Point No.1:: This is a suit for declaration and permanent injunction in respect of suit schedule properties. the plaintiff against the defendants for the relief of declaration and Permanent injunction in respect of the suit properties. The plaintiffs are in possessing and enjoyment of the suit schedule property of Sy.No.84 measuring 0.46 acres of Nandigunda village and defendants are in possession and enjoyment of 0.24 acres in Sy.No.40/6 of Nandigunda village, since the year 1990. The said possession and enjoyment is as per oral exchange of properties. The said exchange of Properties is reflected in the family partition Mahazar of the defendants which is dated 13.08.1995. And the said factum of exchange is recited in the partition Mahazar dt. 13.08.1995 which relates to the Division of family properties of the defendants. The 1st defendant Sri. N.N.Puttaswamy has produced certified copy of the said partition Mahazar before the Gowdalli VSSN Bank Niyamitha to avail loan. Hence plaintiff fairly and honestly feel that the said original partition Mahazar dated 13.08.1995 is within the possession of the 1st defendant. Hence as a measure of

caution and care of the plaintiff prays to 1st defendant and all the defendants to produce the said original partition Mahazar dated 13.08.1995 before the court to ascertain full truth. Since in one of the paras of the said Mahazar it is clearly recited about our exchange of properties. The production of the said document is just and necessary to meet the formalities of procedural law. Further contended that the plaintiff No.2 that in the event of defendant's failure to produce the said family settlement Mahazar dated 13.08.1995, the plaintiff would be able to proceed on the strength of secondary evidence as per law, hence plaintiff No.2 constrained produce original Will before the court and prays to allow this application.

8. In this case the plaintiff submitted that they are virtual owner of the suit property since 23.02.1990. Having derived full and clear possession of the same. By way of exchange of properties, the plaintiffs have given of possession of their land bearing Sy.No.40/6 measuring 0.24 acres, in extent of Nandigunda village, Somwarpet Taluk, in favour of defendants on 23.02.1990. the defendants have given of their possession of the suit land on 23.02.1990, in favour of the plaintiff. After deriving

possession of the suit property the plaintiff are in open, peaceful and uninterupted possession and enjoyment of the suit property till the defendant filed the suit in O.S.No.26/2019. The plaintiff main contention taken in this case one original family partition deed is in possession of defendants but the defendants not produced before this court and it is necessary to decide the case. Hence, he prays to allow this application.

9. The defendant submitted that there is no any partition deed created on 13.08.1995. As there is no partition taken place in the plaintiffs family in respect of suit property. In regard alleged original family partition mahazer dated 13.08.1995 does not arise.

10. It is pertinent to note here that on perusal of deposition when an opportunity was granted, The 2nd plaintiff not produce any documents to show that the existence of original family partition mahazer dated 13.08.1995. The 2nd plaintiff in this application taken contention the 1st defendant Sri.N.N.Puttaswamy has produced certified copy said partition mahazer before the Gowdalli VSSN bank Niyamitha to avail loan, in this

regard the 2nd plaintiff not produced any type of document in this case. In case any certified copy produced before the VSSN bank, Gowdalli to the 1st defendant. The plaintiff can be apply the application before the said bank and taken certified copy. Thereafter he can produce the same before this court. Prima-facie shows that there is no partition deed traced before the defendants and there is no ground to allow this application. Hence, this application may deserved to be dismissed no hardship caused to the plaintiff. In the said circumstances, Point No.1 is answered in Negative.

11. **Point No.2::** For the above discussed reasons, this court proceeds to pass the following:

::ORDER::

The IA No.VI application filed
by the plaintiff No.2 under order
XVI Rule 6 is hereby dismissed .

No order to cost.

[Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced in the open court on this the 16th day of February, 2024]

Sd/-
[K. Gopala Krishna]
Prl Civil Judge and JMFC,

9 O.S.NO.26/2019 & O.S.82/2019

Somwarpet.