

KAKL510000722012



IN THE COURT OF I ADDL. CIVIL JUDGE & JMFC,

AT K.G.F.

PRESENT: **Sri.VINOD KUMAR.M** BAL.,LLB,LLM.,
I ADDL. CIVIL JUDGE & JMFC
AT K.G.F.

O.S. No.376/2012

DATED THIS THE 11th DAY OF JULY - 2023

BETWEEN :

1. Smt.Ramakka Dead by Lrs. on record,

2. Smt.Munirathnamma,

D/o late Nanje Gowda,
W/o Venkateshappa,
Aged about 65 years,

3. Smt.Muniyamma,

D/o late Nanje Gowda,
W/o Venkateshappa,
Aged about 69 years,

4. Smt.Savithramma,

D/o late Nanje Gowda,
W/o Krishnappa,

5. Sri.Nagaraja Gowda,

S/o late Nanje Gowda,
Aged about 58 years,

6. Sri. N.Chandrappa,
S/o late Nanje Gowda,
Aged about 56 years,

7. Smt.Bhagyamma,
D/o late Nanje Gowda,
W/o Venkatarama,
Aged about 50 years,

8. Smt.Lakshamma Dead,

9. Sri. M.Sonne Gowda,
S/o late Munivenkatappa,
Aged about 54 years,

10. Sri. M.Gopal,
S/o late Munivenkatappa,
Aged about 37 years,

All are R/at: Angondahalli Village,
Avani Hobli, Mulbagal Taluk,
Kolar District.

... Applicants/Plaintiffs
(By **Sri.K.V.S.**, Advocate.)

V/s

Smt. G.R.Kamamma
Since dead by Lr.,

Sri. Babu Reddy @ Ramashekar Reddy,
S/o G.R.Sreerama Reddy,
Aged about 45 years,
R/at: Gennerahalli Village, Hulkur Post,
Bethamangala Hobli,
K.G.F. Taluk.

.... Opponent/Defendant
(By **Sri.N.S.**, Advocate.)

Orders on I.A.No.18 U/o 16 Rule 6 & 7 R/w Sec.151 of CPC

At the stage of cross of PW1 & PW5, the Plaintiffs have filed I.A.18 U/o 16 Rule 6 & 7 R/w Sec.151 of CPC to direct the witness i.e., Sub-Registrar of Bangarpet to produce the Book No.III in respect of Registered Will Deed dated 12-03-1947 along with Thumb Impression Book of said Will Deed and to give evidence before the court, In the interest of justice.

2. In the sworn affidavit to support of application contended that, they filed suit for declaration & permanent injunction in respect of suit property. They pleaded in para No.3 of the plaint that, the father of defendant executed Will Deed dated 12-03-1947 in favour of his son and bequeathed the suit property & other property. But, the said Will Deed was registered on 23-05-1947 in Sub-Registrar of Bangarpet. They have produced separate copy of said Will Deed before the court and trying to mark through PW5, but court cannot consider the same without original Will Deed. In this regard, they taken notice U/o 12 Rule 8 of CPC to production of Will, but defendant denied the execution of the same and there is no existence of Will. On these ground, it is very much necessary of Sub-Registrar of Bangarpet to produced document and give evidence in respect of Will Deed for proper adjudication. If the application is not allowed, they will be put loss the injury. Hence, they sought for allowing the application.

3. Per contra, the Defendant has filed objections to present application by denying the contents of affidavit inter-alia contended that, the application is not maintainable either in law or on facts. It is further that, the document sought to be produced through Sub-Registrar of Bangarpet is a public document. But, the plaintiff has not produced original Will Deed and cannot be marked through witness. In view of that, the question of summoning the said Will cannot be allowed under law. The witness of the Will is not witness to the Will. In the absence of Will, the plaintiff cannot seek for summoning the produced document. Hence, he sought for dismissal the application with cost.

4. Heard arguments on both sides and perused the records.

5. The points that arise for my consideration is that,

1. Whether the Plaintiff has made out sufficient ground for summoning the Sub-Registrar of Bangarpet to produce Registered Will Deed dated 12-03-1947 Book No.III with Thumb Impression Book and to give evidence in the above case ?

2. What order ?

6. My findings to the above points are:

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

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

REASONS

7. Point No.1: It is not in dispute, the Plaintiffs filed this suit against Defendant for relief of Declaration of Title & Permanent Injunction in respect of suit property. When the matter is set down for cross of PW1 & PW5 at that time the Plaintiff come up with present application for summoning the Sub-Registrar of Bangarpet to produce Will Deed dated 12-03-1947 Book No.III with Thumb Impression Book and to give evidence in order to adjudication of the matter.

8. The learned counsel for Plaintiffs argued that, the plaintiffs claims over the suit property as absolute owner based on Sale Deed executed by K.C.Rame Gowda, in turn who purchased the suit property from G.R.Srirama Reddy acquired under said Will Deed executed by his father/Rami Reddy. In order to prove the Will, the plaintiffs never original Will and only having separate copy of the Will. On other hand, the defendant denied the execution of Will. Such being, the summoning to Sub-Registrar of Bangarpet for production of Will Deed along with thumb impression book and to give evidence in order to prove the Will. It is necessary to summoned to production of said Will Deed with thumb impression book and give evidence to decide the case. On these ground, the counsel for plaintiffs prays to allow the application.

9. On other hand, the counsel for defendant argued that, there is no existence of Will as stated by plaintiffs. If really plaintiffs want to prove the Will, they have to produce original

Will with proof of the same in accordance with law. The document sought by plaintiffs is public and available to all. But, question of summoned to production of Will Book with Thumb Impression does not arise. On these ground, the counsel for defendant prays to dismissal the application.

10. On perusal of both pleadings itself goes to show that, the Plaintiffs filed suit for Declaration of Title & Permanent Injunction against defendant in respect of suit property. It is specifically pleaded in the plaint that, originally suit property belongs to Rame Reddy none other than father of defendant. The said Rame Reddy bequeathed the suit property & other property under Will dated 12-0-1947 in favour of his son/G.R.Srirama Reddy, who sold the suit property in favour of K.C.Rame Gowda under Sale Deed dated 07-05-1968. In turn, the said Rame Gowda sold the suit property in favour of Nanje Gowda none other than husband of plaintiff No.1 & father of other plaintiffs. Since then, the said Nanje Gowda & family members are owner in possession & enjoyment of the suit property. But, the defendant has no right over the suit property. On other hand, the defendant denying the contention of plaintiff and suit property is joint family property of husband of plaintiff No.8/Munivenkatappa. But, the vendor of K.C.Rame Gowda had no right, title to sell the suit property in favour of husband of plaintiff No.1/Nanje Gowda. Since, the suit property is their Jodi Inamdar Property of family late Rama Reddy, but not denying the any Will executed by Rama Reddy in favour of son/G.R.Srirama Reddy.

11. It is important to note that, the plaintiffs claiming property on the basis of Sale Deed dated 25-09-1975 executed by K.C.Rame Reddy in favour of Nanje Gowda. But, the plaintiffs have proved the valid title of their vendor/K.C.Rame Gowda before sell the property. On other hand, the defendant never disputed the Will Deed dated 12-03-1947 executed by Rama Reddy in favour of G.R.Srirama Reddy in respect of suit property and no issues framed on the basis of Will Deed dated 12-03-1947 as contended by plaintiffs in para No.3 of the plaint. Admittedly, the plaintiffs claiming ownership on the basis of Sale Deed executed by K.C.Rame Gowda on 27-09-1975, but not claims on the basis of Will Deed dated 12-03-1947. If really any Will Deed existence, the vendor of the plaintiffs by name K.C.Rame Gowda to obtained the same from G.R.Srirama Reddy and receive by Nanje Gowda at the time of Sale Deed dated 27-09-1975. Since, there is no contention by both side in respect of alleged Will Deed dated 12-03-1947 has not in existence and genuine. Such being, the question of summoned the Sub-Registrar of Bangarpet to production of Will Deed Book No.3 on 12-03-1947 with Thumb Impression Book and to give evidence before the court does not arise.

12. It is important to note that, U/o 16 Rule 6 & 7 of CPC clearly reads that, summons to produce document and requires person to give evidence before the court. In the instant case, the plaintiffs never seek Declaration of Title on the basis of Will Deed dated 12-03-1947 except seek title on the basis of Sale Deed dated 27-09-1975 executed by K.C.Rame Gowda. Since,

there is no necessity to summoned to production of Will Deed by Sub-Registrar of Bangarpet and to give evidence. It is settled law that, the burden of proof lies on plaintiffs to prove ownership of the suit property on the basis of Sale Deed and valid title of vendor. Such being, the question of summons to production of document and to give evidence by Sub-Registrar of Bangarpet does not arise. Therefore, I am of the considered opinion that, the Plaintiffs have not made out a sufficient ground to summons to production of documents and give evidence by Sub-Registrar of Bangarpet. Accordingly, I have answered to **Point No.1 in the Negative.**

13. Point No.2: In view of my aforesaid findings, I Proceed to pass the following :-

ORDER

I.A.No.18 U/o 16 Rule 6 & 7 R/w Sec.151 of CPC filed by Plaintiffs is hereby dismissed.

No order as to cost.

(Dictated to the stenographer directly on computer and typed by him, corrected, signed by me & then pronounced in the open Court on this the **11th day of July – 2023**)

Sd/-

(VINOD KUMAR M.)

I ADDL. CIVIL JUDGE & JMFC.,
K.G.F.