

KAKL510000722012



IN THE COURT OF I ADDL. CIVIL JUDGE AND J.M.F.C.,
AT : K.G.F.

Present:

Smt. Shemida.K, B.A.(Law), LL.B.,
1st Addl. Civil Judge and J.M.F.C,
KGF

Original Suit No.376/2012

Dated this the 21st day of January, 2025

Plaintiffs : 1. Smt. Ramakka,
W/o. Late Nanje Gowda,
Aged about 93 years,
(Dead).

2. Smt.Munirathnamma,
D/o Late Nanje Gowda,
W/o Venkateshappa,
Aged about 78 years,

3. Smt. Muniyamma,
D/o Late Nanje Gowda,
W/o Venkateshappa,
Aged about 82 years,

4. Smt.Savithramma,
D/o Late Nanje Gowda,
W/o Krishnappa,

5. Smt. Nagaraja Gowda,
S/o Late Nanje Gowda,
Aged about 71 years,

6. Sri.N.Chandrappa,
S/o Late Nanje Gowda,
Aged about 69 years,

7. Smt.Bhagyamma,
D/o Late Nanje Gowda,

W/o Venkatarama,
Aged about 63 years,

8. Smt.Lakshmamma,

W/o Late Munivenkatappa,
Aged about 91 years, (Dead)

9. Sri.M.Sonne Gowda,

S/o Late Munivenkatappa,
Aged about 67 years,

10. Sri.M.Gopal,

S/o Late Munivenkatappa,
Aged about 50 years,

Plaintiffs No.1 to 10 are
R/at Angondahalli Village, Avani Hobli,
Mulbagal Taluk, Kolar District.

(Rep. By Sri.J.P., Advocate)

V/s

Defendant : **Smt.G.R.Kamalamma,**
Since Dead by LRs.,
Sri.G.S. Ramashekar Reddy,
S/o G.R.Sreerama Reddy,
Aged about 58 years,
Gennerahalli Village, Hulkur Post,
Bethamangala Hobli, KGF Taluk.

(Rep. By Sri.N.S., Advocate)

IA No.21 and 22

APPLICANT : **Sri.G.S. Ramashekar Reddy,**
(Defendant)

V/s

OPPONENT : **Smt. Ramakka,**
(Plaintiff)

i. Provision under which the
application is filed

Under Sec.151 of CPC and Order 8
Rule 1(A) r/w Sec.151 of CPC filed
by the LR of the defendant

ii. Relief sought for	To recall the DW1 for further chief-examination and sought permission to produce additional documents.
iii. The date on which the application is filed	20.12.2024
iv. Number of the application	IA.No.21 and 22
v. The date on which the objections are filed by different opponents	09.01.2025
vi. The date on which the orders were passed on the said application	21.01.2025

ORDER ON I.A.No.21 AND 22

The first application filed by the LR of the defendant under Section 151 of CPC as IA No.21 seeking permission to re-call DW1 for further chief-examination and second application under Order 8 Rule 1(A) r/w Sec.151 of CPC as IA No.22 seeking permission to produce additional documents in the interest of justice and equity.

2. In the affidavits filed in support of said applications, the LRs of the defendant has stated that the plaintiffs have filed the present suit against them for the relief of declaration of title and permanent injunction and other reliefs. Further stated that the plaintiff has filed certain endorsements that original records pertaining to three cases before the Spl. Deputy Commissioner for Inams are not available, but he has produced the certified copies of said documents which are already marked. Further stated that the said endorsements are created and he again approached the concerned Tahsildar/ Sheristedar, Record Room, Taluk Office at

KGF and found the entire records pertaining to all the three cases including the coversheet and statements. Hence he intend to produce the same for that the recall of DW1 is very much required. Further the said documents are important documents and they are material evidences to disprove the case of the plaintiffs. Hence prays to allow the applications.

3. On the other hand, the plaintiffs have filed common objection to the said applications wherein it is contended that the present applications are not maintainable either in law or on facts. Further contended that in order to cause harm to plaintiffs and to drag the proceedings the present applications are filed and they are created by the defendants by colluding with the revenue officials. Further contended that the defendants not having any right title, interest or possession over the suit schedule properties. Further contended that the defendants intend to produce the documents after the examination of PW6 who is he official witness which clearly reveals the intention of the defendant to patch up the lacunas in their defences which taken in the written-statement. Further if the applications are allowed the plaintiffs will be put to irreparable loss and injury. Hence it is prayed for rejection of the applications.

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

5. Now the points that arise for my consideration are:

1) Whether the applicant has made out grounds to allow the applications filed under Sec.151 of CPC and Order 8 Rule 1(A) r/w Sec.151 of CPC as IA.No.21 and 22, to recall

DW1 for further chief-examination at this stage as prayed for ?

2) What order?

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

Point No.1 : In the Affirmative,

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

REASONS

7. POINT No.1:- Perused the entire records, instant application with affidavit and objections filed by the party and also arguments canvassed by the learned advocates for the parties. When the matter was stood for cross of DW1, the present two applications were filed by the defendants and opposed by the plaintiffs.

8. Before going into the merit of the application it is appropriate to glance the brief history of present suit. Admittedly the plaintiffs have filed the present suit for the relief of declaration of title, permanent injunction and consequential reliefs. After the granting of interim order in favour of the plaintiffs, suit summons issued to the defendant and he has appeared through his counsel. During the course of trial several applications were filed and disposed off. Meantime the defendant has demised, hence his Lrs were brought on record. Further the record shows that IA.No.18 filed by the plaintiffs was rejected and it was challenged Before Hon'ble High Court of Karnataka in WP.15704/2023 wherein it was allowed and directed this Court to issue summons to jurisdictional sub-registrar, KGF to produce Book-III as well as thumb impression register in relation to Will dated 12.03.1947 and same was observed and witness summons issued to the concerned person.

Later the said witness was examined as PW6 and documents also marked. The counsel for defendant fully cross examined said witness and defendants has led his evidence. Meantime the present application was filed.

9. In the applications the defendants stated that recently he has obtained the documents from the record room pertaining to three cases which was pending before Spl. Deputy Commissioner and he intend to produce the same. Per contra the counsel for plaintiffs contended that to drag the proceedings the present applications were filed and also contended that the proposed documents are created by the defendants by colluding with revenue officials.

10. It is to be noted that one of the application was filed by the defendant under Sec.151 of CPC which deals about saving of inherent powers of the Court which reads as follows: *“Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court”*.

The above said section clearly shows the discretionary power of the Court to pass appropriate order in the interest of justice if there is no provision in the CPC. Further the another provision under Order 8 Rule 1(A)(3) of CPC which is related to duty of defendant to produce documents upon which relief is claimed or relied upon him. Further (3) deals about *A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.* The above said

provisions clearly gives opportunities to the defendants to produce additional documents.

11. It is pertinent to note that, Apex court in **AIR 2013 SC 1849: M/s BAGAI CONSTRUCTION THR.ITS PROPRIETOR LALIT BAGAI V/s M/S GUPTA BUILDING MATERIAL STORE** (as stated supra), it is further held that; *10. In K.K.Velusamy Vs. N.Palanisamy,(2011)11 SCC 275, even after considering the principles laid down in Vadiraj Naggapp Vernekar(dead) through L.Rs v. Sharadchandra Prabhakar Gogate,(2009) 4 SCC 410 and taking note of Section 151, CPC this court concluded that in the interest of justice and to prevent abuse of process of the court, the trial court is free to consider whether it was necessary to reopen the evidence and if so, in what manner and to what extent. Further, it is observed that the evidence should be permitted in exercise of its power under Section 151 of the Code. The court should firstly award appropriate costs to the other party to compensate for the delay, Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous or frivolous, or to cover up negligence or lacunae.*

12. Further the counsel for plaintiff in his objection contended that the proposed documents are created by the defendants by colluding with revenue officials. It is pertinent to note that along with applications the defendants have furnished the certified copies of old documents which are of the year 1963 and if the counsel for plaintiff disputing the genuine of the same, then he can cross examine DW1 in this regard. Moreover producing of document, marking of document and proving of document are

different aspects. It is settled principle of law that Court has to give opportunity to both the parties to establish their case as well as defences. Hence it is appropriate to give one opportunity to the defendants to produce the said additional documents.

13. For the reasons stated and by taking into consideration of the facts and circumstances of the case and in order to avoid multiplicity of proceedings, and to adjudicate the dispute in controversy in the present suit only, it is just and necessary to recall DW-1 for further chief-examination. If an opportunity is not given to the defendants, then it is nothing but driving the parties to another round of litigation. Therefore in order to avoid another round of litigation and to determine the real dispute between the parties, it is just and necessary to give one more opportunity. Moreover it is 2012 matter and both the parties are heavily contesting the suit and once it is reached till Hon'ble High Court of Karnataka.

14. In view of my discussions above, I am of the opinion that, the defendants have made out grounds to re-open the case and to recall DW-1 for further chief-examination. If DW-1 is recalled for further chief-examination, no hardship will be caused to the plaintiffs. On the other hand, if DW-1 is not recalled, then it will cause much hardship on the defendants. With these observations, I answer the **Point No.1 in the Affirmative.**

15. Point No.2: In view of my findings given to the Point No.1 at the aforesaid manner, the applicant is entitled for the relief as prayed for. In the result, I proceed to pass the following:-

∴ ORDER ∴

**The applications filed by the applicant
under Sec.151 of CPC and Order 8 Rule 1(A)
r/w Sec.151 of CPC as IA.No.21 and 22 is
hereby allowed on cost of Rs.500/-.**

(Dictated to the Stenographer directly on computer, revised and corrected by
me then pronounced in the open court, this the 21st day of January, 2025)

Sd/-

(SHEMIDA.K)

**I Addl. Civil Judge & JMFC
KGF.**