

17.01.2023

Pltf By Shri.B.Basavaraj Advocate

Deft No.1 to 3 By Sri.M.B.Konasagar Advocate

for orders on IA.X

// ORDER ON IA No.X //

When the suit is posted for plaintiff evidence this application is filed U/o.16 Rule 6 of CPC to issue summons to the defendant No.1 to 3 for production of original memorandum of partition dated;02.04.1987. To this application the defendant have filed objection.

2. Heard arguments. Peruse the records.

3. The plaintiffs have filed the suit for declaration and injunction in respect of the suit land Sy No.870 Hissa-B measuring 5 acres 16 guntas situated at Kushtagi. It is their case that they are the owners and in possession of the suit land. The defendants without having any rights have illegally got their names mutated in the revenue records. According to the plaintiffs, their father, the father of the defendants, along with their brothers had partitioned the family

properties. However the father of the plaintiffs had not agreed for the said partition since all the family properties were not included. Thereby he had not put his signature to the memorandum of partition prepared by the elders.

4. It is their further case that the father of the defendants even after consenting for the partition had filed a suit for partition in OS No.40/1991 on the file of Senior Civil Judge Koppal. During the pendency of that suit the father of the defendants had sold all the properties allotted to the share of the father of the plaintiffs. The father of the plaintiffs had sold the shopping complex and godown. Thereby the dispute was settled out of court wherein the present suit land came to allotted to the father of the plaintiffs and the suit OS No.40/1991 closed. Thus the father of the plaintiffs was the owner of the suit land. After death of their father, the plaintiffs succeeded to the suit land and are the owners in possession. Accordingly they

have filed the present suit for the above mentioned relief.

5. The defendants have appeared and filed their written statement. In their written statement they have denied the entire allegations made by the plaintiffs in the plaint. They specifically denied any settlement taking place wherein the very suit land came to be allotted to father of the plaintiffs. They further denied the suit OS No.40/1991 being closed in view of the settlement. The plaintiffs being the owners and in possession of the suit land is specifically denied. They contended that they are the owners and possessors of the suit land, accordingly their names are entered in the revenue records.

6. It is their contention that partition has taken place between all the sons of Madannappa wherein the family properties were divided among the four sons. That the father of the defendants had put the signature without knowing the contents of the document, thereby

a false suit came to filed in his name. After coming to know of this fact the suit was got not pressed by him through his son. It is further stated that the suit land was granted to the father of the defendants by the Land Tribunal.

7. The defendants further state that Sharanappa the brother of Karibasappa had unsuccessfully challenged the said order before the Hon'ble High Court. Therefore the present suit filed by the plaintiffs at the instigation of Sharanappa is not maintainable in law. Already the similar suit in OS No.322/2015 has been dismissed on the same ground. Therefore the defendants have prayed to dismiss the suit.

8. Under the present application the plaintiffs are seeking to issue summons to the defendants for producing the original memorandum of partition dated:02.04.1987. In the affidavit the plaintiff No.2 has stated that the original deed was in the custody of

Karibasappa the father of defendants. That document is very essential to adjudicate the matter in issue. Therefore defendants be directed to produce the same.

9. The defendants in their objection though admit execution of a document deny being in custody of the original memorandum of partition. According to them there were two copies of the document one with Sharanappa and the other with the father of plaintiff. Therefore they have prayed to reject IA No.10.

10. The learned counsel for the plaintiffs has submitted that in the earlier proceedings the father of defendants had admitted being in possession of the said memorandum of partition. The original was taken back by him. Therefore it is now in custody of the defendants who are to be directed to produce the same. The learned counsel for the defendants has submitted that only because execution of the document has been admitted the defendants being in custody of

the same cannot be resumed. Therefore no directions can be issue to the defendants for producing the documents. He also submitted that the plaintiff to cause delay have filed such unnecessary applications. Hence he has prayed to reject IA No.10.

11. U/o 16 Rule 6 of CPC any person may be summoned to produce a document without being summoned to give evidence and any person summoned merely to produce a document shall be deemed to have complied with the summons he causes such document to be produce instead of attending personally to produce the same. In the case on hand though the defendants in this proceedings and also their father in the earlier proceedings admitted execution of memorandum of partition, no material is placed on record to show that such document is with the defendants. No doubt the plaintiffs has produced the pleadings and the entire order sheet of earlier suit

from these records it is not shown that the original memorandum of partition is with the defendants.

12. Even otherwise U/o 12 Rule 8 of CPC plaintiff is having right to issue notice to the defendants for production of documents and on service of such notice if the document is not produce then the court can proceed in accordance with law. Moreover the plaintiff has even not produce the copy of such document which he claims is in the custody of the defendants. Such document being produced by the father of defendants in the earlier proceedings and thereafter taking back that document from the court is not established by the plaintiff. Therefore in the absence of any material to show that the document sought to be produced by the defendant is with them the present application is not tenable. Accordingly I proceed pass the following :

// ORDER //

**IA No.10 filed by the
plaintiffs U/o 16 Rule 6 of CPC
is hereby rejected.**

**Call for evidence by
14.02.2023.**

Senior Civil Judge, Kushtagi.