

**IN THE COURT OF THE II ADDL. CIVIL JUDGE  
& JMFC., AT PANDAVAPURA**

**DATED ON THIS THE 11<sup>th</sup> DAY OF APRIL 2025**

**:PRESENT:**

**Smt. Padma.M**, B.A, L.L.B.,  
II Addl. Civil Judge & J.M.F.C.,  
Pandavapura.

**O.S.No.186/2023**

Plaintiff : Halegowda  
(By Sri.BS, Adv.,)  
v/s

Defendants : Somu & Others  
(By Sri.TJP for D1, Sri.BKP for D2 to D4, Advs.,)

**I.A.No.II**

Applicant : Nagesh ---- Defendant No.4  
v/s

Opponent : Halegowda ----- Plaintiff

**ORDER ON I.A.II FILED UNDER ORDER 19 RULE 1 R/W  
SECTION 151 OF C.P.C**

The defendant No.4 has filed I.A. No.II under Order 19 Rule 1 r/w 151 of CPC for prayed permission to file the affidavits of the bajudars of the suit

schedule property. along with bajudars by name M.R.Somashekar S/o Late M.R.Ramegowda and M.R.Somashekar S/o Halasingregowda's affidavits

2. In support of said I.A., the defendant No.4 has filed a affidavit stated that, the plaintiff has filed a suit against the defendants for relief of permanent injunction over the suit schedule property. Further he submits that the plaintiff has created a documents and filed this false case with intention to grab the suit schedule property from the defendants. The suit schedule property is the ancestral property of the defendants. Since said property is not executed, any documents in third party, the defendant No.1 to 3 since from their ancestors, they are in possession of the said property. The plaintiff has not in possession of the said property. In order to prove of their possession, the defendant No.4 has filed the said I.A. for seeking permission to file a bajudars affidavits. If allow the said application, it will not caused to the other side. Hence prayed to allow the application.

3. On the other hand, the plaintiff has filed objection and stated that, the plaintiff has filed a I.A. under Order 39 Rule 1 and 2 of CPC for relief of temporarily restrain the defendants to interfere the suit schedule property till disposal of the suit. During the pendency of the said suit, the defendants are filed this I.A. for collection of the evidence. At this stage, bajudars affidavits cannot be considerable one. The affidavits are relatives and well-wishers of the defendants. They filed a false affidavits. At the time of consideration of the I.A.No.1 u/o 39 rule 1 and 2 CPC, it will be consider only plaintiff's case is the prima-facie case. If not allow the I.A., it will cause irreparable loss to the plaintiff and balance of convenience lies in favour of the plaintiff. Therefore at this stage cannot be consider affidavits of the bajudars. Therefore the plaintiff has filed a said I.A. is not considerable at this stage. Mere filing of the affidavits will not considerable. Said affidavits are not tender the cross-examination and

in what reason, the defendants are filed a said I.A., they are not specifically stated the reasons. Therefore this application is not maintainable. Hence prayed to dismiss the said I.A.

4. Heard the arguments from both sides.

5. On consideration of contentions of both the parties, the following points arise for consideration of this court:

1. **Whether the plaintiff has made out grounds to allow the application?**
2. **What order?**

6. The above points are answered as under:

**Point No.1 : Affirmative**

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

### **REASONS**

7. **Point No.1:-** I have gone through the pleading, application, objections and documents placed before the court, it is disclosed that the plaintiff has filed a suit against the defendants for declaration and injunction over the suit schedule property.

8. The defendants alleged that the plaintiffs are created a documents and filed this false application. Since the defendants ancestors, they are absolute owners and in possession of the suit schedule property. Therefore they have filed this I.A. and seeking for filing of the bajudars affidavits of the

suit schedule property. On the other hand, the plaintiff has filed I.A. under Order 39 Rule 1 and 2 of CPC. At this stage, the defendants are filed this I.A. for prayed filing of Bajudars affidavits without cross-examination cannot be considerable at this stage. I have gone through the provision under Order 19 Rule 1 of CPC, that

“1. Power to order any point to be proved by affidavits:  
Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavits or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party bonafide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.”

9. This provision clearly disclosed that, sufficient reason order that any particular fact or facts may be proved by affidavits any witness, it will be consider affidavit is necessary to take on record. The case on hand, the defendant No.4 has filed a suit for filing affidavit in support of interlocutory application (I.A.) not a main fact. The defendant No.4 has seeking for filing of the affidavits in support of proving of the prima-facie case not a final. At this stage, call for cross-examination of the affidavit witness. This court has relied on the decision reported in AIR 1982 KANT 81, between B.R.Vishwanath Singh V/s Shivalingaiah on 30.06.1981, held that,

“Since it is final proof of a fact that is contemplated in R. 1 it is stated that if the other side desires that the witness, whose affidavit is placed before Court, should be produced for cross-examination the Court should not accept that evidence given in the form of an affidavit. That is why in the proviso to R. 1 it is stated that, ‘an order shall not be made authorising the evidence of such witness to be given by affidavit’. But, that is not the case in R. 2. Here discretion vests in the Court both in the matter of taking evidence by way of affidavits and also in ordering the attendance of those persons (deponents) for cross-examination. Further, if R.1 contemplates affidavits in proof of facts R. 2 contemplates affidavits in support of or against applications. It is true that there are provisions in the Code and in several statutes providing for filing of applications claiming substantive reliefs. Any relief finally granted in such cases can be said to have been given on a particular fact or set of facts proved. To such cases, it can be said, R. 1 is attracted. But, R.2 which does not contemplate any such proof of fact or facts may be construed as one applicable only to applications claiming interim reliefs like a temporary injunction, appointment of a receiver, appointment of a guardian ad litem and the like. Rules framed by High Courts also contemplate that an interlocutory application filed by a party should be supported by his affidavit. Averments in such an affidavit of a party is taken as a prima facie proof of the fact alleged in that application. IF that is so why not affidavits of his witnesses for that limited purpose in order to find out as to whether there is or there has been a prima facie proof (not final) of that fact?.”

10. I have gone through the above said decision, it clearly shows that provision under Order 19 Rule 1, it clearly shows that only affidavit filed by the parties, it takes as a prima facie proof of the fact alleged in that application not a final of the fact. In that instant with a interlocutory application under Order 19 Rule 1 of CPC not a final of the suit. Though the Court not stated that, it is not permit to parties place the affidavit evidence under Order 9 Rule 2 of the CPC. Therefore the defendant No.4 has made out a ground to allow the application. Accordingly, this court answered **above point No.1 in the Affirmative.**

11. **Point No.2:** In view of the above discussions, this court proceed to pass the following;

### **ORDER**

**IA No.II filed by the defendant No.4 U/O  
19 Rule 1 r/w sec.151 of CPC, is hereby  
allowed.**

**Affidavits of M.R.Somashekar S/o Late  
M.R.Ramegowda and M.R.Somashekar S/o  
Halasingregowda who are the bajudars of the  
suit schedule property taken on records.**

(Dictated to the Stenographer, transcribed and computerized by her and then corrected by me and then pronounced on this the 11<sup>th</sup> day of April 2025)

**(PADMA.M.)  
II Addl. Civil Judge & JMFC,  
Pandavapura.**

Orders pronounced in the open court (vide separate orders)

**ORDER**

IA No.II filed by the defendant No.4 U/O 19  
Rule 1 r/w sec.151 of CPC, is hereby allowed.

Affidavits of M.R.Somashekar S/o Late  
M.R.Ramegowda and M.R.Somashekar S/o  
Halasingregowda who are the bajudars of the suit  
schedule property taken on records.

II ACJ & JMFC,  
Pandavapura.