

Order on I.A.No.VII

I.A.No.VII filed by the applicant/Respondent No.11 u/o 8 rule 1(a) (3) R/w Sec.151 of CPC. In the application Respondent No.11 seeking order to produce the document for the reason as stated in the affidavit. On oath the applicant/Respondent No.11 has stated that, he is intending to produce document in support of his defense. He could not produced the same well in time but no malafide intention for non production of the same at earlier point of time. Hence prays for allowing the application in the interest of justice and equity.

2. The counsel for the Petitioner filed objection and stating that, the application is not maintainable either in law or on facts. The 11th Respondent herein also Respondent No.14 in R.S.A.258/2005. Then in O.S.20/1991 and R.A.6/2000 the 11th Respondent was a party to the proceedings. But in all the judicial proceedings i.e., before the Trial Court, appellate court and Hon'ble High court of Karnataka none of the court observed that Respondent No.11 is the bonafide purchaser of the land. By virtue of this reason the production of the document as contended by the applicant in the F.D.P. proceedings does not arise. Hence the production of document is not necessary at this stage. Hence prays for disposal of the application with cost.

3. On the basis of the application and objection the Point for consideration is as follows :

1. Whether the applicant/Respondent No.11 has made out a ground for allowing the application for the

production of the document produced along with the application for the reasons as stated in the affidavit at this stage ?

2. What order ?

4. My answer to the above said points are as follows :

Point No.1 : In the affirmative

Point NO.2 : As per final order for the following

REASONS

5. On perusal of the entire records available in the file the Respondent No.11 is also a defendant in O.S.20/1991, Respondent in R.A.6/2000 and RSA.258/2005. The Respondent No.11 participate in the entire judicial proceedings from O.S. till appeal before the Hon'ble High court of Karnataka. Whether the Hon'ble court have observed that Respondent No.11 is bonafide purchaser or not will consider at the time of disposal of the FDP.2/2009. Now the applicant has intending to produce the document as sought in the application. Mere receive the document on record subject to proof of relevancy will meet the ends of justice. The intention of the Respondent No.11 is only to produced the document before the court, nothing more than that. Before receipt of the document it is not proper to give finding of that document that, that document is not essential or necessary to disposal of the petition on merits. More over the Petitioner has contended that, none of the court has observed that, the applicant is the bonafide purchaser of the land. Except that objection there is no other serious objection raised by the Petitioner. According to the Petitioner the applicant has filed the

present application only with an intention to drag on the proceedings. But this objection can be over come by way of direction to the applicant to proceed of case without obtaining unnecessary adjournment will meet the ends of justice. The applicant has made out a ground for receipt of the document as per the wordings as employed in U/o 8 rule 1(a)(3) of CPC which reads as follows : **1A. Duty of Defendant to produce documents upon which reliefs is claimed or relied upon by him : (1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such document in a list, and shall produce it in court when the Written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the Written statement.**

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) 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.

(4) Nothing in this rule shall apply to documents :

- (a) Produced for the cross-examination of the plaintiff's witnesses, or**
- (b) Handed over to a witness merely to refresh his memory.**

6. As per order 8 rule 1(a) (3) at the hearing of the suit with the permission of the court the defendant may produced the document. The reasons as stated in the affidavit are believable as just and reasonable. By considering all these aspect the applicant has made out a ground for allowing the application.

7. In view of the above said discussion by considering the property right of the parties and keeping in mind the nature of the suit, I answer point No.1 in the affirmative.

8. **Point No.2** : In view of the discussion at point No.1, I proceed to pass the following:

ORDER

- I.A.No.7 filed by the applicant/ Respondent No.1 U/o 8 rule 1(a) (3) R/w Sec.151 of CPC is hereby allowed.
- Document produced along with the application is received on record subject to proof and relevancy.

Addl. Senior Civil Judge
Srirangapatna.