

KAMS010052362021



**IN THE COURT OF THE III ADDL DISTRICT & SESSIONS
JUDGE, MYSURU**

Present: Smt.K.Bhagya, B.A.,L.L.B.

Dated this the 28th day of March 2024

O.S./6/2021

Plaintiffs:

C.R.Vishwaprakash and Another

/vs/

Defendant:

Dr.C.B.Murthy @ Chingategere Basappa
Murthy.

IA.No.IX & X

The defendant has filed IA.No.IX under Order 16 Rule 1(3) & Rule 1A, 2 R/w Sec.151 of CPC praying this Court to summon witnesses who are cited in the application i.e. 1.Smt.Nalinamurthy W/o C.B.Murthy, 2.Dr.Sathish Govindappa S/o Late Govindappa and 3.Prasad.V S/o Late Venkatanayaka.

2. The defendant has also filed IA.No.X under Order 16 Rule 6(3) & Rule 1A, 2 R/w Sec.151 of CPC praying this Court

to summon the witnesses to produce the documents as stated in the application.

3. He has prayed to summon Dr.Prabudhala Harsha to produce all the in patient and out patient medical records, treatment taken and daignosis, medications of late C.B.Leelavathi D/o Late Basappa.

4. He has prayed to summon Dr.Smt.B.Lakshmi Bai W/o P.Mohanrao to produce the original sale deed dated 08/11/2013 registered as document No.MYS-1-05965-2013-14 and stored in CD.No.MYSD212 in the office of the senior Sub-Registrar Mysore South executed by Smt.C.B.Leelavathi W/o late K.C.Hanumappa and R.Venugopal in favour of Dr.Smt.B.Lakshmi Bai in respect of apartment No.002, Ground Floor, Sai Heritage Enclave, Property No.5, 3rd Block, 7th Main, Jayalakshmipuram, Devaraj Mohalla, Mysuru.

5. He has also prayed to summon Sri.R.Venugopal S/o late H.Ramamurthy to produce the registered agreement for sale dated 10/08/2011, registered as document No.MYS-1-03489/2011-12 stored in CD.No.MYSD169 of Book 1 dated 10/08/2011 in the office of the Sub-Registrar Mysore South executed by Smt.C.B.Leelavathi W/o late K.C.Hanumappa and R.Venugopal S/o late H.Ramamurthy and also to produce the joint development agreement dated 12/07/2011 executed by Smt.C.B.Leelavathi W/o late K.C.Hanumappa and R.Venugopal S/o late H.Ramamurthy in respect of property

bearing model house No.5, 3rd Block, 7th Main, Jayalakshmipuram, Devaraj Mohalla, Mysuru.

6. Along with IA.No.IX, the advocate for defendant has filed his affidavit in which he has affirmed on oath stating that the present suit is renumbered P&SC.29/2019 petition filed for grant of letters of administration by the plaintiffs. The letters were obtained without arraying the defendant, brother of late C.B.Leelavathi as a party to the P&SC.29/2019. Hence, on learning the same, it was challenged in P&SC.42/2020, later registered as C.Misc.22/2021 and this Court has revoked the letters of administration granted by it surrender it to the Court and ordered the proceedings in P&SC to be afresh with defendant to be arrayed as a party.

7. Now, the above case posted for evidence of defendant Dr.C.B.Murthy. He is suffering from ill health and he is not able to travel to Mysuru from Mumbai and he is not in a position to personally come before the Court to give evidence. The medical certificate issued by the doctor with discharge summary was produced on the last hearing. Other witnesses are to be examined in the matter who are shown in the list and the documents described in the other application are to be summoned. The witness Smt.Nalina Murthy wife of Dr.C.B.Murthy is also personally aware of the facts and circumstances of the case and all the suspicious circumstances surrounding the fabrication of the Will in

question by the plaintiff. Hence, she has to be summoned to give evidence. The witness Dr.Satish Govindappa treated late C.B.Leelavathi at Basappa Memorial Hospital, Mysuru, along with the defendant and is aware of the medical history and illness she was suffering from and is a vital witness to know the medical condition, illness she was suffering. Sri.Prasad.V is the person assisting Dr.C.B.Murthy and Nalina Murthy taking care of the suit lands, crops, plantations at Padukote Kaval Village, H.D.Kote Taluk since many years and when the plaintiff tried to enter upon and interfere with the possession he has stopped him and complaint registered and he too is personally aware of late C.B.Leelavathi and all circumstances, events which are relevant to the lands of the suit. The defendant has got a prima-facie defense in the matter and the evidence of all these witnesses is necessary and relevant for proving the facts contended and pleaded by the defendant as to the falsity of the facts pleaded by the plaintiff and the suspicious circumstances of the case.

8. Along with IA.No.X the advocate for defendant has filed his affidavit in which he has stated all as stated in the affidavit annexed to IA.No.IX. Further sworn to the effect that the witness Dr.Prabhudhala Harsh is one of the Directors of Basappa Memorial Hospital and in charge of all the records of the hospital including the medical records of the patients. Late C.B.Leelavathi was treated at same hospital and the medical records are relevant to prove the medical condition of

late C.B.Leelavathi before her death that she was suffering from for many years. He must be summoned to produce the documents of treatment of C.B.Leelavathi. These documents will also compliment the evidence to be given by Dr.Satish Govindappa. Another witness Dr.(Smt) B.Lakshmi Bai and Sri.R.Venugopal are necessary to produce the original documents described in the application against them containing the original admitted signatures of late C.B.Leelavathi. The same are to be compared with the disputed denied signatures of late C.B.Leelavathi claimed by the plaintiff in the Will set up by the plaintiff. The defendant has got a prima-facie defense in the matter and the evidence of all these witnesses is necessary and relevant for proving the facts contended and pleaded by the defendant as to the falsity of the facts pleaded by the plaintiff and the suspicious circumstances of the case.

9. The defendants also stated that if the applications are not allowed the right to defend and prove the burden cast on the defendant will be annulled without fair trial and opportunity. No hardships or prejudice will be caused to the plaintiff if the application is allowed. The plaintiff will have a right of cross examination and it will lead to effectual adjudication of the issues between the parties fully and finally. Hence, prayed to allow the applications.

10. The plaintiff No.1 has filed objection to the above applications contending that the applications filed by the

defendant are not maintainable either in law or on facts of the case. The plaintiffs submit that order 16 Rule 1(3) of CPC reads as follows:

“(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), **if such party shows sufficient cause for the omission to mention the name of such witness in the said list**”.

11. On perusal of the applications filed by the defendant, the defendant has not shown sufficient cause for the omission to mention the name of such witness in the list of witness which should be filed according to order 16 rule 1 of CPC.

12. The defendant not taken any plea in his written statement. The defendant has not made out any grounds to urge the above application before the Court. On perusal of the entire order of the above case it can be concluded that the defendant is prolonging the above proceedings by putting forth one or other reasons to delay the proceedings. The above case is put down for the stage to adduce the evidence of the defendant by the Court on 18/12/2023, on that day defendant was not present before the Court and the case postponed to 03/01/2024, on 03/01/2024 also the defendant was not present before the Court, the defendant advocate

seek 2 weeks of time and the same is granted and postponed the above case to 24/01/2024, on 24/01/2024 the defendant filed IA under Order 17 rule 1 and 2 of CPC seeking adjournment of the case, the case posted to 26/02/2024 on 26/02/2024 the defendant again filed the above application. This clearly shows that the intention of the defendant to delay the above case. The application is not maintainable on technical grounds also. As per the defendant's advocate the defendant is unable to give instruction and defendant is bed ridden. How is it possible for defendant instructed the advocate on record to file the above application it is to be considered. The order of adducing the evidence is overlooked if the Court allows the above said IA. The defendant never came up before the Court till today. Hence, prayed to dismiss the applications.

13. Heard the argument of advocate for plaintiffs and defendant.

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

1. Whether the plaintiff has made out grounds to allow IA.No.IX & X?

2.What Order?

15. My answers to the above points are as follows:-

Point No.1 : In the Affirmative.

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

REASONS**POINT NO.1:**

16. Here, P&SC.29/2019 has been numbered as OS.No.6/2021. The plaintiffs are C.R.Vishvaprasakash and Smt.R.Yogini. The defendant is Dr.C.B.Murthy @ Chinagategere Basappa Murthy. After numbered as original suit, the 1st plaintiff has been examined as P.W.1 and Ex.P1 to 11 have been marked. He has been thoroughly cross examined by the advocate for defendant. Later, it was posted for defendants evidence. The advocate for defendant filed adjournment applications stating that the defendant has been hospitalized at Mumbai. To that effect, he has also produced the medical certificate and other medical documents. They revealed that the defendant C.B.Murthy is aged about 83 years and he had a history of stroke during Jan-2023. He has stroke related complications and hence he is unable to travel from Mumbai to Mysuru to attend the Court.

17. Now, the defendant has come up with these IA's. To summon the witnesses as well as to summon the documents from the witnesses. He want to examine Smt.Nalinamurthy who is his wife, who is personally aware of the facts and circumstances of the case. He want to examine Dr.Sathish Govindappa who treated late C.B.Leelavathi at Basappa Memorial Hospital, Mysuru. He want to examine Prasad.V as he was assisting the defendant and

Nalinamuarthy in taking care of the suit lands crops plantations at Padukote Kaval Village.

18. As the above witnesses are relevant witnesses as per the affidavit sworn by the advocate for defendant, this Court is of the view that they have to be summoned in the interest of justice and equity.

19. Further, the defendant also want to summon the witnesses to produce some documents. They are Dr.Prabudhala Harsha to produce all the in-patient and out-patient medical records, treatment taken and daignosis, medications of late C.B.Leelavathi D/o Late Basappa and to summon Dr.Smt.B.Lakshmi Bai W/o P.Mohanrao to produce the original sale deed dated 08/11/2013 registered as document No.MYS-1-05965-2013-14 and stored in CD.No.MYSD212 in the office of the senior Sub-Registrar Mysore South executed by Smt.C.B.Leelavathi W/o late K.C.Hanumappa and R.Venugopal in favour of Dr.Smt.B.Lakshmi Bai in respect of apartment No.002, Ground Floor, Sai Heritage Enclave, Property No.5, 3rd Block, 7th Main, Jayalakshmipuram, Devaraj Mohalla, Mysuru. He has also prayed to summon Sri.R.Venugopal S/o late H.Ramamurthy to produce the registered agreement for sale dated 10/08/2011, registered as document No.MYS-1-03489/2011-12 stored in CD.No.MYSD169 of Book 1 dated 10/08/2011 in the office of the Sub-Registrar Mysore South executed by Smt.C.B.Leelavathi W/o late K.C.Hanumappa and

R.Venugopal S/o late H.Ramamurthy and also to produce the joint development agreement dated 12/07/2011 executed by Smt.C.B.Leelavathi W/o late K.C.Hanumappa and R.Venugopal S/o late H.Ramamurthy in respect of property bearing model house No.5, 3rd Block, 7th Main, Jayalakshmipuram, Devaraj Mohalla, Mysuru.

20. The above documents sought to be summoned by the defendant are really necessary to prove his defence. Hence, the above witnesses cited in IA.No.X have to be summoned to produce the documents sought by the defendant in the interest of justice and equity. Hence, I answer Point No.1 in the **Affirmative**.

POINT NO.2:

21. In the result, I proceed to pass the following:-

ORDER

IANo.IX filed under Order 16 Rule 1(3) & Rule 1A, 2 R/w Sec.151 of CPC and **IA.No.X** filed under Order 16 Rule 6(3) & Rule 1A, 2 R/w Sec.151 of CPC are hereby allowed.

(Dictated to the Stenographer directly on computer and then pronounced in the open court on this the 28th day of March 2024)

(K.Bhagya)
III Addl. District & Sessions Judge,
Mysuru.

(Order pronounced in open Court vide
separate Order)

ORDER

IANo.IX filed under Order 16 Rule 1(3)
& Rule 1A, 2 R/w Sec.151 of CPC and
IA.No.X filed under Order 16 Rule 6(3)
& Rule 1A, 2 R/w Sec.151 of CPC are
hereby allowed.

III AD & SJ, Mysuru.