

Orders on IA.No.14

The defendant No.1 filed I.A.No.14 U/o 16 Rule 1 & 6 of C.P.C. and prays to issue witness summons to the Deputy Tahasildar, Nada Kacheri, Yelwala, Mysuru Taluk to produce the document as stated in the application schedule.

2. The application is support by an affidavit sworn to by the defendant No.1 by name B.N. Mallesha.

3. On the contrary the learned advocate for plaintiffs filed objections and prays to dismiss the application.

4. Heard, perused the materials placed on record.

5. The following points arise for my consideration:

1) Whether the I.A.No.14 filed by the defendant No.1 U/o 16 Rule 1 & 6 of C.P.C. is deserves to be allowed ?

2) What order ?

6. My answers to the above points are as follows:

Point No.1 : As affirmative.

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

REASONS

7. **Point No.1** :- The defendant No.3 contended that he had forwarded an application to the office of Deputy Tahasildar, Nada Kacheri, Yelwala Mysuru Taluk for seeking certified copy of IHR No.10/1995-96 pertaining to land bearing Sy.No.19/1 of Bommenahalli, Yelawala Hobli, Mysuru Taluk which is included in the suit schedule property. But, the said authority issued an endorsement on 04.01.2020 stating that the document is in status of mutilated. Hence, the

application was kept in abeyance. The said document is absolutely necessary and relevant to substantiate the defence of the defendant No.1. Hence prays to allow the plaintiff.

8. In support of his contention the learned advocate for defendant No.1 produced and relied on the following decisions;

AIR 2009 KERALA 104 between Eldhose -Vs- Yacob and others.

Civil P.C. (5 of 1908) O. 16, R. 6 – Right to Information Act (2 of 2005), S.2 – Summons to produce documents – Request for summoning document cannot be rejected on ground that petitioner can very well obtain copy of document under Right to Information Act – In a Civil Suit, if a party applies for issuing summons for production of documents, that has to be dealt with under Civil P.C. and not under provisions of Right to Information Act – Right to Information Act does not in any way curtail powers of Civil Court under Civil P.C. - Proceedings under Right to Information Act cannot be subject matter of scrutiny before a civil Court.

1994 (3) Civil L.J 88 – between Sampath -Vs- Karthikeyan

Code of Civil Procedure, 1908, Order Rule 6 – Summons for production of document – Denial of signature of promissory note – Any witnesses alleged to be not available – Application made for summoning pay bill and acquittance register of relevant time for comparison of true and for obtaining opinion of hand writing-expert – Discretion exercised by summoning record with a view to find out truth in the interest of justice – Summoning order being justified no interference.

2000 (4) Civil. L.J. 719 between Deepak Gupta -Vs- Bank of Baroda and others.

Code of Civil Procedure 1908, Order XVI, Rule 6 – Summons to produce document – Photo copy of possession report on record - Original possession report required to prove the photo copy – Summoning of original possession report to be permitted.

8. On the other hand the learned advocate for plaintiffs contended that the application filed by the defendant No.1 is not maintainable either under law or on facts and the same is liable to be dismissed in limine. The matter was originally posted for cross-examination of PW.1. But, instead of cross-examining him, the 1st defendant kept on dragging the matter endlessly and thus this court pleased not to take the cross-examination as nil and posted the matter for further evidence. Then the defendant No.1 got the sale reopened and yet did not cross-examine PW.1 and again it was taken as nil. The defendant again filed application to reopen and recall the witness for cross-examination and the same was allowed for second time and the matter posted for cross-examination of PW.1 for the third time. But, the defendant No.1 instead of leading evidence dragging the same for four five months and now come up with the present application which is not maintainable. As per the say of defendant No.1 the Deputy Tahasildar has given endorsement to the effect the file is mutilated. If that is the case summoning the said Deputy Tahasildar would not serve any purpose. The very document is given as endorsement is sufficient. If the document is mutilated beyond copying how can that be produce in evidence. The attitude and approach adopted by the defendant No.1 so far stands as mute testimony for his intend to drag on the matter. Hence, prays to dismiss the application.

9. It is pertinent to note that as per the contention of defendant No.1 the document i.e.,

IHR.10/1995-1996 with respect to Sy.No.19/1 of Bommenahalli Village was not issued by the Deputy Tahasildar, stating that it is in a mutilated condition. The defendant No.1 has also produced the endorsement issued by the Deputy Tahasildar, Nada Kacheri, Yelawala dated 04.01.2020 which clearly reveals that the said document is in mutilated condition, as such the said Deputy Tahasildar cannot be issued the document. But, it is in the interest of justice and to adjudicate the matter completely and effectively it is necessary to obtain the said document. Hence, I answer Point No.1 as affirmative.

7. Point No.2 :- In view of my findings of point No.1 as affirmative, I proceed to pass the following:

ORDER

I.A.No.14 filed by the defendant No.1 U/o 16 Rule 1 & 6 of C.P.C. is hereby allowed.

Issue witness summons to Deputy Tahasildar, Nada Kacheri, Yelawala to produce the IHR.10/1995-1996 with respect to Sy.No.19/1 of Bommenahalli Village, Mysuru taluk if PF paid.

No order as to cost.

Call on for 06.07.2020.

**Sd/-
JUDGE,
Addl. Court of Small Causes,
MYSURU.**