

KAMS300000312013



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE
AND J.M.F.C AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Prl.Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 28th day of June, 2025.

OS No.64/2013

Plaintiff: Smt.Prabha Budanur,
W/o Late B.P.Mahendra Budanur,
Aged about 69 years, R/at No.623,
Beside Niveditha School, Vasathanagara
Main Road, Bengaluru – 560 061.

-Vs-

Defendants: 1. Sri.B.P.Suresh Babu, S/o Late Petaiah,
Aged about 71 years, Contractor, Business,
2. Dr.P.Shakunthala, D/o Late Petaiah,
Aged about 78 years,
Both are residing at No.1159/A, 2nd Cross,
Ashokanagara Extension, Ward No.19,
Mandya City – 571 401.
3. Smt.B.P.Susheelamma, D/o Late Petaiah,
W/o Dr.T.Lingaiah, R/at No.1515/1,
“Lakshmi Nilaya”, 100 feet Road, Ward No.20,
Mandya City – 571 401.

Since Dead Represented by LR's

- 3(a). Dr.T.L.Lingaiah, H/o Late B.P.Susheelamma, Aged about 85 years, R/at No.1515/1, "Lakshmi Nilaya", 100 feet Road, Ward No.20, Mandya City – 571 401.
- 3(b). Smt.Vrunda Shankara, D/o Late B.P.Susheelamma, W/o Dr.Vijaya Shankara, R/at No.B3T4 34221, "Prestige Falcon City", Konanakunte, Bengaluru – 560062, Karnataka State,
- 3(c). Sri.Harsha Lingaiah, S/o Late B.P.Susheelamma, Aged about years, R/at No.1515/1, "Lakshmi Nilaya", 100 feet Road, Ward No.20, Mandya City – 571 401.
4. Sri.B.P.Petaiah Mohan, S/o Late Petaiah, Aged about 73 years, No.1159/A, 2nd Cross, Ashoknagara Extension, Ward No.19, Mandya City – 571 401.
5. Smt.Leela, W/o Late B.P.Chandrashekar, Aged about 65 years,
6. Sri.Viswas, S/o Late B.P.Chandrashekar, Aged about 50 years, Engineer by Profession,
- Defendants No.5 and 6 are residing at No.54, Rajkumar Extension, Ward No.29 and 30, Mandya City.
7. Smt.Sowmya, W/o B.P.Suresh Babu, Aged about 65 years, House Wife and Agriculturist, R/at No.1159/A, 2nd Cross, Ashoknagara Extension, Ward No.19, Mandya City – 571 401.

8. Dr.K.Chandrashekar, S/o K.C.Kalegowda,
Aged about 49 years,
9. Dr.Tara Chandrashekar,
W/o K.Chandrashekar, Aged about 43 years,

Defendants No.8 and 9 are doctors by
Profession, R/at No.1191, 3rd Cross,
Ashokanagara, Mandya City.

10. Sri.Somasundarababu, S/o K.Shrikanta Shetty,
Aged about 60 years, R/at No.1241, 4th Cross,
Ashokanagara, Mandya,
11. Smt.Geetha Lakshmi.K.S.,
W/o Somasundarababu, Aged about 55 years,
R/at No.1241, 4th Cross, Ashokanagara,
Mandya City.
12. Dr.K.S.Jayaram, S/o K.Siddegowda,
Major, R/at No.1611/A, 1st Cross, Vidya Nagara,
Mandya City.
13. Smt.Jyothi Budanur, D/o Late B.P.Mahendra
Bundanur, R/at No.3130, Bellur,
Dr.Darien IL – USA.

1.	Provision under which the application are filed	:	Under Order VII Rule 14 of CPC and Order XI Rule 14 R/w Section 151 of CPC
2.	Relief sought for	:	Seeking for condoning the delay in production of the documents and mark the documents and also to direct the 1 st defendant to produce the documents

3.	The date on which the applications are filed	:	09.12.2024 and 04.04.2025
4.	Number of the applications	:	IA No.XX and IA No.XXI
5.	The date on which the objections are filed by different opponents	:	18.01.2025 and 22.04.2025
6.	The date on which the orders passed on the said application	:	28.06.2025

ORDERS PASSED ON IA NO.XX AND IA NO.XXI

When the case is posted for cross-examination of PW1, the learned counsel for the plaintiff filed I.A.No.XX under Order VII Rule 14 of CPC to permit her to produce the documents by condoning the delay in production of the same and to permit her to mark the said documents. The plaintiff also filed IA No.XXI under Order XI Rule 14 R/w Section 151 of CPC to direct the 1st defendant to produce the documents mentioned in the application which are in possession of the 1st defendant and the documents are essential and necessary to prove the suit.

2. Both the applications are supported with the affidavits of the plaintiff. In the affidavit filed in support of I.A. No.XX the plaintiff stated that, she has filed the suit against the defendants for the relief of partition and separate possession of her legitimate share over the suit schedule properties. That, at the time of her cross-examination, the 1st defendant demanded her to produce the documents for having transferred the funds from the accounts of herself and her husband to the 1st defendant. She has requested the Bank

Authorities to issue certified copies regarding wire transfer but the authorities have not yet issued the same. She has secured the xerox copies of the wire transfer dated 21.10.2004, 20.02.2003, 26.07.2004, 01.07.2002, 10.06.2004 etc., which clearly indicate the mode of payments transferred to the account of the 1st defendant. The delay is caused due to bonafide reasons and not intentional and prayed to condone the delay in producing the documents and to allow the application.

3. In the affidavit filed in support of I.A.No.XXI the plaintiff stated that, during the life-time of her husband, herself and her husband have jointly spent their hard skill for development of joint family as well as joint family properties. Herself and her husband transferred huge amount through wire transfer from their accounts from United States of America to the account of 1st defendant who had his accounts at State Bank of Mysore. Her husband passed away long back and she is residing at Bengaluru. It is further stated that, the 1st defendant is denying that, the suit schedule properties are the joint family properties and in the cross-examination the 1st defendant demanded her to produce the documents for having invested funds for development and purchase of properties. Even the counsel for the 1st defendant not cross-examined until she produces the documents. That, when she filed the xerox copies of the said documents the 1st defendant seriously filed his objection.

4. It is further stated that, inspite of her several efforts to secure Bank statements of her husband at America as the transactions for the years 01.04.2000 to 01.04.2009 which are not available at USA. After the death of her husband she is residing in India and she being senior citizen having no supporters was became victim in the hands of 1st defendant who is political leader in Karnataka. She has further stated that, Bank Authorities are not issuing the statements of 1st defendant and also his income tax returns. Hence, the 1st defendant is required to produce the said documents. If the applications are not allowed she will be put to great hardship. On the other-hand if the same is allowed, no hardship is going to be caused to the other-side. Hence, prayed to allow the application.

5. On the other-hand the learned counsel for the 1st defendant filed separate objection to both the applications. In the objection filed to IA No.XX the 1st defendant contended that, the application is not maintainable under law or on facts. It is further contended thakt, the documents sought to be produced are not at all relevant and tenable in the eye of law. It is further contended that, the suit is filed on 12.06.2013 which came to be dismissed for non-prosecution on 02.04.2018 and Mis No.11/2018 was filed under Order 1X Rule 9 R/w Section 151 of CPC for restoration which came to be allowed on 30.07.2018. The plaintiff filed her chief-examination affidavit on 12.09.2024 and got marked 21

documents as per Ex.P1 to Ex.P21 on 15.10.2024, 25.10.2024 and 14.11.2024. After giving several opportunities the plaintiff not produced the relevant documents. It is further contended that, the suit of the plaintiff mainly relies upon the documents now produced and prayed to reject the application with costs.

6. In the objection filed in support of IA No.XXI the 1st defendant contended that, the application is frivolous, created and not tenable under law. It is contended that, the 1st defendant is suffering from cancer since 21 years and he is under continuous medical treatment. Further, contended that, in the cross-examination there is no demand made by him to produce the documents. It is also contended that, the prayer made in IA No.XXI under Order 11 Rule 14 R/w Section 151 of CPC and IA No.XX under Order 7 Rule 14 of CPC are one and the same. It is also contended that, the documents are not in the custody of 1st defendant. The income tax returns are old documents i.e., two decades lapsed and those are all not in the possession and custody of the 1st defendant. It is also contended that, the said documents are public documents and the plaintiff can get and produce the same to prove her case. The plaintiff has to prove her case independently and cannot shift the burden to the shoulders of the 1st defendant. It is further contended that, in order to escape from her duty and liability and in order to disrupt the defence of the 1st defendant the applications are filed. Hence, prayed to reject the applications with costs.

7. Thereafter, heard arguments addressed by learned counsels for the plaintiff and the 1st defendant and perused the case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

POINTS

1. Whether the plaintiff has made out sufficient grounds to condone the delay in production of the documents and permit her to mark the documents on her behalf?
2. Whether the plaintiff has made out sufficient grounds to direct the 1st defendant to produce the documents mentioned in the application?
3. What order?
8. The findings of the above points are as hereunder:

Point No.1: Partly in the affirmative

Point No.2: In the Negative

Point No.3: As per the final order
for the following:

REASONS

9. **Point No.1 and 2:-** Since these points are inter-linked with each other and needs common discussion on the same set of facts and in order to avoid repetition of facts these points are taken up together for discussion.

10. The plaintiff has filed the suit against the defendants for the relief of partition and separate possession of her 1/4th share over the suit schedule properties. It is the specific case of the plaintiff that, one Petaiah is the original

propositous of the family and one Smt.Hombalamma is his wife. Said couple are having totally six children i.e., Sucheelamma, who is 3rd defendant, Dr.B.P.Shakunthula who is the 2nd defendant, B.P.Chandrashekar who is the husband of 5th defendant and father of 6th defendant, Dr.Petaiah Mohan who is the 4th defendant and B.P.Suresh Babu who is the husband of defendant No.7.

11. It is the specific case of the plaintiff that, all the suit schedule properties are the ancestral and joint family properties of herself and the defendants. It is also further case of the plaintiff that, her husband during his lifetime was working in the United State of America and from there he use to send money through Bank transactions from his account as well as her account to the 1st defendant in order to develop the suit schedule properties. It is further case of the plaintiff that, the 1st defendant after the death of her husband has failed to give her share. As such she has brought the suit.

12. In the plaint the plaintiff has taken specific contention that, during the lifetime her husband as well as herself have paid huge amount to the account of the 1st defendant in order to enable him to develop the joint family properties. On the other-hand the 1st defendant in his written-statement has specifically denied the said fact. The burden of proving said fact is upon the plaintiff. The plaintiff has filed her chief-examination affidavit and she was chief-examined on 15.10.2024, 25.10.2024 and 14.11.2024 and she got marked

totally 21 documents as per Ex.P1 to Ex.P21. Her cross-examination was commenced on 28.11.2024 and the further cross-examination was deferred on the said date and in the deposition dated 28.11.2024 it is written as hereunder:

ಮುಂದುವರಿದ ಪಾಟೀಸವಾಲು: ಈ ಹಂತದಲ್ಲಿ ಸಾಕ್ಷಿಯಲ್ಲಿರುವ ದಾಖಲೆಗಳನ್ನು ಹಾಜರುಪಡಿಸಿದ ನಂತರ ಪಾಟೀಸವಾಲನ್ನು ಮುಂದುವರಿಸುವುದಾಗಿ ವಕೀಲರು ಕಾಲಾವಕಾಶ ಕೋರಿದ್ದು, ಮುಂದೂಡಲಾಯಿತು.

13. Prior to the recording of aforesaid statement in the deposition it is further deposed by PW1 as hereunder:

ಪೇಟಿಯು ಅವರು ಜೀವಂತ ಇದ್ದಾಗ ಅವರ ಮಕ್ಕಳು ವಿಭಾಗ ಮಾಡಿಕೊಂಡಿದ್ದರು ಎಂದು ಹೇಳಿದ್ದು, ಇದರ ಬಗ್ಗೆ ದಾಖಲೆಗಳನ್ನು ಹಾಜರುಪಡಿಸಿದ್ದೇನೆ. ಈಗ ಕೇಳುತ್ತಿರುವ ಪ್ರಶ್ನೆಗಳಿಗೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ನಾನು ದಾಖಲೆಗಳನ್ನು ಮುಂದೆ ಹಾಜರುಪಡಿಸುತ್ತೇನೆ. ನಾನು ಹೇಳುತ್ತಿರುವ ಸ್ವತ್ತುಗಳಿಗೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಮಾಹಿತಿಯನ್ನು ಮತ್ತು ದಾಖಲೆಗಳನ್ನು ಹಾಜರುಪಡಿಸಬೇಕಾಗಿತ್ತು ಎಂದರೆ ಅದು ತಿಳಿದಿರಲಿಲ್ಲ, ಈಗ ಕೇಳುತ್ತಿರುವ ಪ್ರಶ್ನೆಗಳಿಗೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ನಾನು ದಾಖಲೆಗಳನ್ನು ಮುಂದೆ ಹಾಜರುಪಡಿಸುತ್ತೇನೆ.

ಆಸ್ತಿ ಸಂ. 619/ಪಿ, 1ನೇ ಪ್ರತಿವಾದಿ ಹೆಸರಿನಲ್ಲಿ ಇದೆ. ಆಸ್ತಿ ಸಂ.619/ಪಿ ರ ಸ್ವರೂಪ ಯಾವುದು ಎಂದರೆ ನನಗೆ ನೆನಪಿಲ್ಲ. 5ನೇ ಪುಟದಲ್ಲಿ ಕಾಣಿಸಿರುವ ಆಸ್ತಿ ಸಂ.D8 12168/1518 ಅಳತೆ 40x50, 40x60, 30x40, 40x70 ರ ಸ್ವತ್ತುಗಳು 1ನೇ

ಪ್ರತಿವಾದಿ ಪತ್ನಿಯಾದ 7ನೇ ಪ್ರತಿವಾದಿ ಹೆಸರಿಲ್ಲಿ ಇವೆ. ಸದರಿ ಸ್ವತ್ತುಗಳನ್ನು ಕಳುಹಿಸಿದ ಹಣದಿಂದ ಖರೀದಿ ಮಾಡಲಾಗಿದೆ, ಈ ಬಗ್ಗೆ ನನ್ನಲ್ಲಿ ದಾಖಲೆ ಇವೆ. ನಾನು ಅಮೇರಿಕಾದಿಂದ 1ನೇ ಪ್ರತಿವಾದಿ ಹೆಸರಿಗೆ ನಗದಾಗಿ, ಚೆಕ್ ಮೂಲಕ ಮತ್ತು ಬ್ಯಾಂಕ್ ಟ್ರಾನ್ಸ್ ಫರ್ ಮೂಲಕ ಕಳುಹಿಸಿದ್ದೆ. ಸದರಿ ಹಣದ ವರ್ಗಾವಣೆ ಈ ದಾವೆ ಹಾಕುವ ಪೂರ್ವದಲ್ಲಿ ಆಗಿದೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ದಾಖಲೆಗಳನ್ನು ದಾವೆ ಹಾಕುವ ಸಮಯದಲ್ಲಿ ಹಾಜರುಪಡಿಸಬಹುದಾಗಿತ್ತು ಅದು ನನ್ನ ಗಮನದಿಂದ ಬಿಟ್ಟುಹೋಗಿತ್ತು ಅದರ ಬಗ್ಗೆ ನನಗೆ ವಿಷಾದವಿದೆ.

14. The above evidence from the mouth of the plaintiff reveals that, she had documents about marking transfer of funds from the accounts of herself and her husband to the account of 1st defendant. By way of filing IA No.XX, the plaintiff got produced the xerox copies of outgoing wire transfer request agreements dated 21.10.2004, 20.02.2003, 26.07.2004, 10.06.2004, xerox copy of indemnity bond dated 01.07.2002, xerox copy of wire transfer dated 07.11.2002 and 24.04.2000. In the affidavit filed in support of IA No.XX, the plaintiff specifically stated that, she has made effort to get the documents. In spite of her effort she could not able to get documents but the plaintiff has not produced a single document to show that, she had made any application to the concerned bank. If at all there is bank transactions definitely she will get the documents. The plaintiff without making any

effort to get the document from the concerned authorities is not entitled to produce the xerox documents. Further, it is to be noted that, the documents produced by the plaintiff along with I.A are the xerox copies and there is no opportunity for her to mark the xerox copies in evidence. The plaintiff nowhere in the affidavit stated that, how she obtained the xerox copies. Learned counsel for the plaintiff has placed reliance on the decisions reported in:

ILR 2019 KAR 906

Between: **R.Lakshminarasimha V/s Gouthamchand**

Wherein Hon'ble High Court of Karnataka has held as hereunder:

“Production of xerox copies of exhibits marked in evidence. Rejection of application by the trial court by holding that when primary evidence is available before the court, secondary evidence cannot be permissible. Though the provision of Section 65 of India Evidence Act may not be strictly applicable, nevertheless it is the fundamental duty of the court to provide fullest opportunity to the accused to defend himself by producing documents in his favour and to lead evidence. Though the xerox copies may not be directly allowed to be marked, but here in view of the allegation that, the originals have been manipulated, the xerox copies themselves may act as primary evidence before the court infavour of the accused when the alleged materially altered originals are available”.

(2020) 20 SCC 456

Between: **Mohinder Singh V/s Jaswant Kaur (Dead) by LRs.**

Wherein Hon'ble Supreme Court of India has held as hereunder:

“Carbon copy prepared in the same process as the original document. Once such carbon copy is signed by both the parties, it assumes the character of the original”.

Writ Petition No.208417-208420/2017

Between : **Shivalingamma and others V/s Revansiddappa since dead by others.**

Wherein Hon'ble High Court of Karnataka has held as hereunder:

“When once the foundation is laid stating that the defendant is having such document is with him though the defendant has denied the same, then it becomes subject matter of the evidence to be appreciated by the court whether the defendant infact had the original with him and the document which is placed before the court is the true and correct xerox copy of the same”.

15. In this case the plaintiff has produced the xerox copies pertaining to transfer of money to the account of the 1st defendant. If at all such transactions have been taken place definitely the plaintiff can obtain the copies from the concerned financial institutions. The plaintiff in her plaint has stated about the documents and in the cross-examination she has stated that, said documents are with him. But now she

came up with xerox copies of the documents and she has not produced any materials before the court regarding the attempt made by her to get primary evidence. As such the principles laid down in the above decisions are not aptly applicable to the facts of the case on hand. Such being the case she is entitled to produce the xerox documents but she is not entitled to get mark those documents. Therefore, the plaintiff is permitted to produce those documents.

16. It is very pertinent to note that, in the objection statement, the 1st defendant contended that, the documents sought to be produced under I.A. No.XXI are not at all in his custody. Such being the case, this court cannot compel the 1st defendant to produce the documents which are not in his custody. The plaintiff has to prove her case on her and she cannot shift the burden to the shoulders of the 1st defendant. Therefore, this court comes to the conclusion that the plaintiff has not made out any sufficient grounds to direct the 1st defendant to produce the documents mention in the application. Accordingly, Point No.1 is answered Partly in the affirmative and Point No.2 is answered in the Negative.

17. **Point No.3:** In view of the reasons discussed above, this court proceeds to pass the following:

ORDER

IA No.XX filed under Order 7 Rule 14 of CPC by the plaintiff is hereby partly allowed with costs.

The documents produced along with IA No.20 are received. The prayer of the plaintiff to mark those documents is hereby rejected.

Further, IA No.XXI filed under Order 11 Rule 14 R/w Section 151 of CPC by the plaintiff is hereby rejected with costs of Rs.300/-.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 28th day of June, 2025.)

(Anitha)

Prl. Senior Civil Judge and JMFC,
Hunsur.