

Order on I.A under Order XI Rule 14 of CPC.,

The counsel for the Plaintiffs has filed this application to direct the Defendant No.1 to produce the Corporation Bank Pass book and the Canara Bank statement of Late Bhadrappa.

2. In the affidavit annexed to the present application, it is sworn by the 1st Plaintiff that y well as on behalf of her sisters viz., Plaintiff No.2 and 3. That during the pendency of this suit, their father Sri.Bhadrappa died and that during his lifetime, they never executed any release deed in his favour and never 66received a sum of Rs.10 Lakhs which is shown in the release deed. That after the death of their father, defendant No.1 is managing all the transactions of his father and now he is in possession of all the documents

shown in the application. The said documents are very much necessary to prove their case. That till date, the Defendant No.1 has not produced any of the Bank pass book or bank statement of Late Bhadrappa. Defendant No.1, in his cross-examination has also admitted that the compensation amount received from KIADB towards acquisition of joint family property is also deposited in his account. Therefore by allowing this application, no loss or hardship is going to be caused to the other side and on the other hand, by rejecting the same, they will be put to great loss and hardship. Accordingly, they have prayed to allow the application.

3. Per contra, the Defendant No.2 has filed objections to the present application by opposing to allow the same on the ground that the same is not maintainable either in law or on facts and that the Defendant No.1 is already dead and the Plaintiffs cannot seek direction from this court against a dead person. That it is stated in the affidavit that the Defendant No.16

was managing all the affairs of the joint family and that he was in possession of the bank pass book and related documents. As such, now they do not know the whereabouts of the said documents, which were kept by Defendant No.1. That he is not at all concerned with the said documents. Hence on these among other grounds urged in the objections, he has prayed to dismiss the application with costs.

4. Heard both the sides and perused the materials on record.

5. Admittedly the Plaintiffs have filed this suit against the Defendants for partition and separate possession and for declaration that the registered sale deed dated 13-11-2009 and the release deed dated: 13-11-2009 are null and void and not binding on them.

6. As could be seen from the rival contentions of the parties with regard to the present application, according to the Plaintiffs, Defendant No.1, being their father, was the Kartha of the family and admittedly he

OS.393/2009

died during the pendency of this suit. The Defendants have relied upon a registered release deed dated 13-11-2009 alleged to have been executed by the Plaintiffs in favour of Defendant No.1. But the Plaintiffs deny the alleged execution of any such document. Of course the question regarding the alleged execution of the said document is a matter of trial and the same has to be proved by the respective parties. In so far as the present application filed by the Plaintiffs is concerned, as rightly pointed out by the learned counsel for the Defendant No.2, the Plaintiffs cannot seek direction against Defendant No.1, who is a dead person. Though it could be inferred that the Plaintiffs intended them intervention of this court to direct the Defendant No.2 to produce the said documents before this court, the Defendant No.2 in his objections has taken up the contention that he is not the custodian of the said documents. In such circumstance, when the party from whom the documents are sought to be summoned claims that he is not in possession of any of such documents, he cannot

be compelled by the order of this court to produce them. Of course in such circumstance, in the event of Defendant No.2 intending to produce any such document/s in future, the same will be prohibited in view of Illustration (g) to Sec.114 of the Indian Evidence Act. But, as of now, when the Defendant No.2 denies the alleged custody and possession of any of such document/s sought by the Plaintiffs, the prayer of the Plaintiffs cannot be entertained by this court. Then the question of directing Defendant No.1, who is a dead person, does not arise at all. However, when the recitals of the Release deed refers to the alleged passing of 6consideration, even the Plaintiffs can produce their own bank statements or pass books to prove the contrary or they can very well make an attempt to summon the said document/s from the concerned bank, through which accounts the said transactions are alleged to have taken place. Accordingly, this court is of the considered opinion that the application cannot be allowed. In view

OS.393/2009

of my aforesaid reasons and discussions, I proceed to pass the following:-

ORDER

I.A filed by the Plaintiffs under Order XI Rule 14 R/w. Sec. 151 of CPC is hereby rejected.

Considering the fact that this is one of the oldest matters pending on the file of this court, the parties are directed to proceed with the matter diligently and assist for the earlier disposal of the suit.

**Pri.Senior Civil Judge and CJM,
Ramanagara.**