

IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE & J.M.F.C.,

AT: MAGADI

Present:

Sri.Hanumanth Satwik., LL.M.
Addl. Senior Civil Judge & JMFC. Magadi

Dated : This the 26th Day of November, 2020

O.S.No.10/2015

- Plaintiffs** : 1. Smt. Kariyamma,
D/o late Lakshminarasimhaiah,
Aged about 52 years,
R/at Uddanahalli Village,
Tavarekere Hobli,
Bengaluru South Taluk.
2. Sri. L.Narasimhaiah,
S/o late Lakshminarasimhaiah,
Aged about 55 years.
3. Sri. L.Narasimhamurthy,
S/o late Lakshminarasimhaiah,
Aged about 51 years.

Plaintiff No.2 and 3 are R/at
Ankaiahayanapalya Village,
Ajjanahalli Dakale, Tavarekere Hobli,
Bengaluru South Taluk.

{ By Sri. K.R.A., Advocate }

V/s

- Defendants** : 1. Sri. Siddappa,
S/o late Chikkamuthaiah,
Aged about 54 years.
2. Sri. Narasimhamurthy,
S/o Siddappa,
Aged about 28 years.

Both are R/at
Somanathapura, Ajjanahalli Dakale,
Tavarekere Hobli,
Bengaluru South Taluk.

{ Defendant No.1 & 2 Represented by Sri. N.S., Advocate }

ORDER ON IA NO. IX

The present suit is for declaration and permanent injunction.

2. The present application is filed by the plaintiffs seeking permission of this court for production of documents. Plaintiff No.3 in his affidavit accompanying the application submits that Hanumaiah executed Will datd:15.11.1999 in his favour and in favour of plaintiff no.2. They produced some of the original documents and certified copies of the documents along with the Will, before the Hon'ble Court of District and Sessions Judge, Ramanagara in Misc.Petition No.10/2014. They received the original as well as certified copies of

the documents on 05-10-2019. In this circumstances the documents sought to be produced in the present suit could not be produced. The delay in producing the documents is not intentional. The documents sought to be produced are essential. In this regard the plaintiffs pray as above.

3. Defendant no.1 filed objection to the application, the defendant contends that the plaintiffs have not shown sufficient cause for delay in producing the documents. The plaintiffs filed the application in order to fill up the lacuna. The plaintiffs have not stated anything about the documents sought to be produced in the plaint. The plaintiffs were aware about the documents sought to be produced at the time of institution of the suit. There is an inordinate delay in producing the documents. The plaintiffs filed IA No.VII U/o VII rule 14 (3) of CPC before the Hon'ble Court of 1st Addl. District and Sessions Judge at Ramanagara on 23.04.2018 to produce the documents. He filed objections to the application. The Hon'ble court of 1st Addl. District and Sessions Judge, Ramanagara dismissed the application vide order dated:28.06.2018 on the ground that the application is not

tenable, it is bald and there is no explanation for delay caused in producing the documents. The order of Hon'ble Court of 1st Addl. District and Sessions Judge, Ramanagara was challenged before Hon'ble High Court of Karnataka in W.P No.29972/2018. The Hon'ble High Court of Karnataka dismissed the petition. The plaintiffs suppressed the true facts. In this regard defendant no.1 prays to reject the application.

4. Heard arguments of the counsel for the plaintiffs and defendant no.1.

5. Considering the contention of both the parties following points arise for my consideration;

1. Whether Plaintiffs have made out a case for permitting them to produce documents as sought for ?
2. What order?

6. My finding for the above points are as follows

- Point No.1 : In the affirmative
Point No.2 : As per final order
For the following,

REASONS

7. **Point No.1**:- It is the case of the plaintiffs that they produced some of the original as well as certified copies of the documents and the original Will in Misc.Petition No.10/2014 before the Hon'ble Court of District and Sessions Judge, Ramanagara. They obtained the said documents on 05.09.2019. In this regard I have perused the pleadings. In the suit at hand plaintiff no.2 and 3 have sought for declaration of ownership with respect to item no.2 of the suit schedule property on the basis of Will dated:15.11.1999. Further, the plaintiffs have sought for declaration to declare that the order on probate dated:30.06.2012 in P & Sc No.5/2012 is not binding on them. Be it stated, having regard to the questions involved in the suit, I am of the view that to decide the suit the documents sought to be produced are essential.

8. Considering the application on hand and the documents sought to be produced, I am of the view that the right of the Plaintiffs to put forth their case cannot be curtailed. As it amounts to curtailing the rights of the plaintiffs to claim remedy against the defendants. Considering the application and the objections, I am of the further

view that the defendants has every opportunity to test the documents intended to be produced, by way of cross-examination. This being the case since the defendants has the right to cross examine plaintiffs and test the veracity of the documents intended to be produced therewith, no harm will be caused to the defendants if documents sought to be produced are taken on record, as the right of the defendants to cross-examine plaintiffs and hence to test the documents remains intact. This being the case, it is not just and proper to curtail the rights of the Plaintiffs from producing the documents at this stage of the proceedings.

9. It is the contention of defendant no.1 that the plaintiffs filed similar application before the Hon'ble Court of 1st Addl. District and Sessions Judge at Ramanagara. The Hon'ble Court dismissed the application on the ground that the application is not tenable and no explanation is given for delay in producing the documents. The said order was challenged before Hon'ble High Court of Karnataka vide WP No.29972/2018. The Hon'ble High Court of Karnataka dismissed the application. In this regard I have perused the documents produced by

the defendants and plaintiffs namely the applications, objections and the certified copy of the order sheet of the Hon'ble Court of 1st Addl. District and Sessions Judge, Ramanagara of Misc.Petition no.10/2014. I have also perused the order of Hon'ble High Court of Karnataka in WP No.29972-75/2018 (GM-CPC). Be it stated, the reasons that were provided in the application filed before the 1st Addl. District and Sessions Judge, Ramanagara for delay in producing the documents in Misc. Petition no.10/2014, is different from the reasons provided in the present application. Further, the truth or falsity of the reasons provided for delay in producing the documents, in the application on hand, is the subject matter of trial. Furthermore, for the reasons stated above it is clear that the documents intended to be produced before this court are essential to decide the questions involved in the suit. So also, the facts and circumstances of the case before the Hon'ble Court of 1st Addl. District and Sessions Judge, Ramanagara wherein Hon'ble Court rejected IA No.VII, is different from the facts and circumstances of the present case. In this circumstances with due respect to the order of Hon'ble Court of 1st Addl. District & Sessions, Judge, I am of the view that the order of

Hon'ble court of 1st Addl. District & Sessions Judge, Ramanagara rejecting IA No.VII is of no avail to defendant no.1 to contend that the present application is liable to be rejected.

10. It is to be noted that only on the grounds that there is a delay in filing the application and the reasons provided in the application are insufficient, the plaintiffs cannot be refrained from producing the documents and hence to bring the documents on record. It is settled principle of law that the procedural law is hand maid of justice and procedural law should not be construed strictly so as to undermine justice. For this I rely on the decision of Hon'ble Supreme Court of India Salem Advocates' Bar Association v. Union of India cited in AIR 2005 SC 3353 wherein it was held thus;

“The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of justice and not its mistress.”

On the touchstone of the law laid down by the Hon'ble Supreme Court

of India I am of the view that the contentions of defendant no.1 are of no avail to him.

11. The learned counsel for the defendants in support of his case relied on the decision of Hon'ble High Court of Karnataka between Sri.Gurugundabramheswara Swamy Deity, Tumkur District V/s Girishkumar and another in WP No.53777/2015 and WP No.917-918/2016(GM-CPC). I have perused the decision relied on by the learned counsel for defendant no.1. In the case at hand the documents sought to be produced are necessary to determine the questions involved in the suit. Further, the facts and circumstances present in the case at hand are different from the facts present in the decision relied upon by the learned counsel. In this circumstances with due respect to the decision relied on by the learned counsel for defendant no.1, I am of the view that the decision of the Hon'ble Court is of no avail to defendant no.1.

12. It is to be considered that if the present application is not allowed the plaintiffs cannot put forth their grievance and hence the inconvenience which may be caused to them is more than the

inconvenience which may be caused to defendant no.1 if the application is allowed. Further, if the application is not allowed the injury which may be caused to the plaintiffs cannot be compensated at any cost, on the other hand defendant no.1 has the opportunity to contest the matter and get the same decided on merits. Considering the facts and circumstances of the case and for the reasons stated above and in the interest of justice and equity I decide point no. 1 in the affirmative.

13. **Point No.2:-** In view of reasons on point No.1, I proceed to pass the following,

ORDER

**IA filed U/o.7 Rule 14 (3) of CPC filed by the
Plaintiffs is hereby allowed on cost of Rs.200/-.**

(Dictated to the Stenographer, typed by him corrected by me and then pronounced in the open court on this the **26th November 2020.**)

(Hanumanth Satwik)
Addl. Senior Civil Judge & JMFC
Magadi.