



**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE & J.M.F.C.,**  
**AT:MAGADI**

**Present:**

**Sri. Sandeep S. Reddly, LL.M,**  
**Addl. Senior Civil Judge & JMFC., Magadi**

**DATED: THIS THE 19<sup>th</sup> DAY OF FEBRUARY, 2024**  
**O.S.No.116/2016**

**Plaintiff** : Smt. Venkatamma,  
W/o late Bettaiah,  
Aged about 60 years,  
R/at Donenahalli Village,  
Bidadi Hobli,  
Ramanagara Taluk & District.  
(By **Sri. B.V.K.**, Advocate)  
--V/s--

**Defendants** : 1 Sri. Galappa,  
Father name not known  
Aged about 70 years,  
R/at Mayasandra Village,  
Thavarekere Hobli,  
Bengaluru South Taluk.

2 Sri Munikrishnappa,  
S/o late Channapillaiah,  
Aged about 41 years,  
R/at Donenahalli Village,  
Tavarekere Hobli,  
Bengaluru South Taluk.

3 The Special Land Acquisition Officer,  
Kaveri Bhavan, K.G.Circle,  
Bengaluru – 560 009.

4 Smt. Arasamma,  
W/o late Kemoaiah,  
R/at Mayasandra Village,  
Chikkanahalli Post,



Tavarekere Hobli,  
Bengaluru South Taluk.

5. Smt. Lakshamma,  
W/o. Madaiah,  
D/o. Late. Kempaiah,  
Aged about 58 years,  
R/at: Kere Chudahalli Village,  
Somanahalli Post,  
Uttarahalli Hobli,  
Bangalore South Taluk,  
Bangalore Urban District - 560 082.
6. Sri. Narasimha Murthy,  
Aged about 56 years,  
S/o. Late. Kempaiah,  
R/at: Mayasandra Village,  
Chikkanahalli Post,  
Tavarekere Hobli,  
Bangalore South Taluk,  
Bangalore Urban District - 562 130.
7. Smt. Kamamma,  
W/o. Marinnanappa,  
D/o. Late. Kempaiah,  
Aged about 54 years,  
R/at: Anchipura Village,  
Byramangala Post,  
Bidadi Hobli,  
Ramanagara Taluk & District - 562 109.
8. Sri. Nagaraju,  
S/o. Late. Kempaiah,  
Aged about 52 years,  
R/at: Mayasandra Village,  
Chikkanahalli Post,  
Tavarekere Hobli,  
Bengaluru South Taluk.

( Defendant no.1 by **Sri. S.H.**, Advocate )  
( Defendant no. 2 by **Sri. A.N.**, Advocate )



( Defendant no. 3 by **Sri. K.R.M.**, Advocate )  
( Defendant no. 4 by **Sri. S.H.**, Advocate )  
( Defendant no.5 to 8 by **Sri. N.K.**, Advocate )

**ORDER ON IA NO.8**

The defendant No.4 to 8 have filed the I.A.No.8 U/O.11 R.14 of C.P.C., praying for summoning the original Will, which is in custody of defendant no.1.

2. The aforesaid suit is for the relief of partition, separate possession and consequential reliefs against the defendants.

3. The I.A.No.8 is filed by defendant No.4 to 8 praying for directing the defendant No.1 to produce the original registered Will dated: 11.03.1976. In the accompanying affidavit, the defendant No.4 to 6 state that, Sri. Muttaiah S/o. Channamuttaiah had bequeathed the 'B' schedule property in favour of defendant No.1 and his wife Muninarasamma and he had further bequeathed 'A' schedule property to defendant No.4 and her husband Late. Kempaiah. That, the original Will was executed with a single document and the said Will is in the custody of defendant No.1. That, the original Will was produced before the Court of Prl. Civil Judge & JMFC., at Magadi in O.S.No.86/2011 by plaintiff and it was proved by examining the attested witness. That, production of the aforesaid Will is



necessary for the case of defendant No.1 and hence the defendant No.1 has produced the certified copy of the Will dated: 08.03.1976 and has filed the aforesaid application as prayed for.

4. The 6<sup>th</sup> defendant has filed objections to the aforesaid application by stating that, the application is not maintainable. That, there is no question that has remained to be determined in this Court with respect to 'B' schedule property and its legacy. That, no question remains to be answered with respect to bequeathing of the schedule 'A' property by Sri. Muttaiah. That, the provision invoked by defendant No.6 has no application and the said application cannot be allowed. Hence, the defendant No.6 has prayed for rejection of the aforesaid application.

5. The defendant No.1 has filed the objections to the aforesaid application by contending that, defendant No.1's father purchased the schedule through a registered sale deed. That, the Court has not framed issues regarding the Will. Hence, the question of production of the Will does not survive. Hence, the defendant no.1 prays for rejection of the aforesaid application.



6. Heard learned Advocate for defendant No.4 to 8, defendant No.6 and defendant No.1.

7. Considering the contentions of the counsel, following points arise for my consideration.

1. Whether the defendant No.4 to 8 make out a case for directing the defendant No.1 to produce the bill dated: 11.03.1976 as sought for?

2. What order?

8. My findings for the above points are as follows.

Point No.1: In the affirmative,

Point No.2: As per final order.

For the following,

### **REASONS**

9. **POINT NO.1:-** The aforesaid suit is for partition, declaration and permanent injunction filed by the plaintiff. In the prayer the plaintiff has sought for the declaration that the sale deed dated: 23.04.1972 executed by father-in-law of plaintiff is null and void and the same is not binding on the plaintiff. It is the case of the plaintiff that, one Sri. Chennaiah was the propositus of the joint family and the father-in-law of the Sri. Motaiah was the son of the propositus and had alienated the schedule property.



10. The applicant has filed the aforesaid application praying for the directions from this Court to direct defendant No.1 to produce the Will dated: 08.03.1976 bequeathed by Sri. Muttaiah. This court has also framed an additional issue casting burden on plaintiff to prove the suit schedule property as her joint family and ancestral property. This court has cast issues No.5 to 7 directing the defendant No.4 to prove the execution of registered sale deed. Since issue no.4 is directly casted putting burden to prove the said point on defendant No.4. In order to prove the aforesaid point, the defendant No.4 has filed the aforesaid application.

11. The aforesaid application is filed U/O.11 R.14 of C.P.C. The defendant No.6 has taken the contention that, the provision U/O.11 R.14 of C.P.C., does not provide for the defendants to produce the documents.

12. Order 11 Rule 14 of C.P.C., provides for production of documents in the evidence at any time. The O.11 R.16 provides for notice to produce the said documents. The said provision is introduced with a view to help the court to come a conclusion as per Sec.114 of Indian Evidence Act. The Sec.114(g) of Indian Evidence Act provides that, if a person with holds a document which would be unfavourable to him is given, then court can



presume that, the said person has with hold the said document as it goes against him. The said Sec.114(g) of Indian Evidence Act reads as follows;

***“That evidence which could be and is not produced would, if produced, be unfavourable to the person who with holds it.”***

13. Thus it is clear that, if a person for some reasons does not provide the document for either inspection as per Order 11 Rule 18 or for production as per O.11 R.14, then Sec.114 of Indian Evidence Act becomes applicable. This view of this Court is supported in ***Union of India v. Ibrahim Uddin, (2012) 8 SCC 148 : (2012) 4 SCC (Civ) 362 : 2012 SCC OnLine SC 528*** at page 165, which reads as under;

***"25. In the instant case, admittedly, Respondent 1-plaintiff during the pendency of his suit had made an application before the authorities under the control of the appellant-Defendant 1 to make the inspection. However, he was not permitted to have any inspection. Respondent 1-plaintiff did not submit any interrogatory statement or an application for making inspection or for production of the document as provided under Order 11 CPC. In such a fact situation, in view of the law referred to hereinabove, it is not permissible for the first appellate court or the High Court to draw any adverse inference against the appellant-Defendant 1.***



***85.16. The courts below had wrongly drawn adverse inference against the appellant-Defendant 1 for not producing the documents as there was no direction of the court to produce the same. Neither Respondent 1-plaintiff had ever made any application in this respect nor he filed any application under Order 11 CPC submitting any interrogation or for inspection or production of document."***

14. Since the burden is cast on defendant No.4 to prove issue No.5 and additional issue, it is just and necessary to allow the aforesaid application in the interest of justice and equity. Hence, I answer point No.1 in the affirmative.

15. **POINT NO.2:** In view of reasons on point No.1, I proceed to pass the following,

**ORDER**

**IA No.VIII filed U/O.11 Rule 14 of C.P.C., by defendant No.4 to 8 praying to summon the registered Will dated: 11.03.1976 from the custody of defendant No.1 is hereby allowed. Office is directed to issue notice as per O.11 R.16 of C.P.C., as per Appendix-C in Form No.7.**

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O.S.116/2016(Or.)

**Call on for production of documents by  
10.04.2024.**

(Dictated to the Typist, transcribed & typed by her, corrected by me and then pronounced in the open court on this the **19<sup>th</sup> day of February, 2024.**)

**(Sandeep S. Reddy)**  
**Addl. Sr. Civil Judge & JMFC.,**  
**Magadi.**