

1) RA No: 213-2014 (old No: 115-2013) jt.

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

Present:- Sri. K. Mahadeva, B.A., LL.B.,
Sr. Civil Judge & JMFC.
Magadi.

DATED THIS THE 15th DAY OF February 2017

R.A. NO.213/2014.
(Old No: 115/2013)

Plaintiff:-

Sri. Ramamuthaiah,
S/o late Ramaiah,
Aged about 61 years,
R/o Ganakallu village,
Kengeri Hobli,
Bangalore South Taluk,
Bangalore -

(By B.V... advo..)

AND:

Defendants:-

Sri. V. Narayanaswamy,
S/o late Sri. Venkataiah,
Aged about 57 years,
R/o Yalachaguppe village,
Tavarekere Hobli,
Bangalore South taluk,
Bangalore.

(Def. 1 By. G.N.R advo)

(K. Mahadeva),
Sr. Civil Judge & JMFC.,
Magadi.

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ORDERS ON I.A.NO.2 FILED U/O 41 RULE 27 OF C.P.C.
BY THE PLAINTIFF.

The appellant has filed IA 2 U/o 41 rule 27 of CPC and prays to permit him to produce additional evidence on his side and permit to produce additional documents. He has filed his affidavit in support of this application and contends that he has filed suit in OS. No. 114/07 before, the trial court for Temporary injunction in respect of Sy. no. 163 of Yalachaguppe village measuring 32 gts. He has purchased 3 acre 20 gts as per the sale deed dated 17.04.1995 from one Muniyappa S/o Gallappa. He has purchased 1 acre 1 gts in Sy. No. 163 of Yalachaguppe village from one Gangaiah and his son as per the sale deed dated 28.02.1997 out of 3 acre 20 gts of land, he has sold 2 acre 28 gts in the said Sy. no. in favour of one Krishna on 07.08.2006 and retained 32 gts and he is in possession of the said property. He has sold 1 acre 1 gts of land in Sy. No. 163 to the Respondent on 03.04.2006. He is in possession of 32 gts of land, that is the suit schedule property, he has not produced any documents in respect of Sy. No. 163 of yalachaguppe village before the Trial court. Therefore, it is necessary to produce documents in respect of his contention and he prays to allow IA No. 2.

2. The respondent has filed objections to IA No. 2 and contended that the application filed by appellant is not maintainable, the affidavit averments are false averments,

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he has admitted the filing of OS. No. 114/07 by appellant . The respondent has further contended that the appellant has adduced evidence and produced any documents on his side and the trial court has dismissed OS No. 114/07 on 23.03.2013. Considering the documents produced by the appellant, the present case has been posted for arguments, but the appellant has not argued . Instead of that he is submitting the documents, the appellant has filed IA No. 2 , it is not maintainable . The suit was for permanent injunction therefore, the additional documents is not entertainable. The sufficient time was there to produce the documents before the trial court. The plaintiff has deliberately has not produced the documents before, the trial court. In order to counter the defense of the Respondent, the appellant has come with this application . Therefore, he prays to dismiss on IA. 2.

3. Heard the arguments, the appellant has furnished the written arguments , perused entire file.

4. The points that arise for my consideration are:

1. Whether the plaintiff has made out grounds to allow I.A. No. 2?
2. What order?

5. My findings to the above points are as follows:-

Point No.1 In the **affirmative**

Point No.2 : As per the final order,
For the following

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REASONS

6. POINT NO. 1 :- The appellant has filed IA 2 U/o 41 rule 27 of CPC and prays to permit him to produce additional evidence on his side and permit to produce additional documents. He has filed his affidavit in support of this application and contends that he has filed suit in OS. No. 114/07 before, the trial court for Temporary injunction in respect of Sy. no. 163 of Yalachaguppe village measuring 32 gts. He has purchased 3 acre 20 gts as per the sale deed dated 17.04.1995 from one Muniyappa S/o Gallappa. He has purchased 1 acre 1 gts in Sy. No. 163 of Yalachaguppe village from one Gangaiah and his son as per the sale deed dated 28.02.1997 out of 3 acre 20 gts of land, he has sold 2 acre 28 gts in the said Sy. no. in favour of one Krishna on 07.08.2006 and retained 32 gts and he is in possession of the said property. He has sold 1 acre 1 gts of land in Sy. No. 163 to the Respondent on 03.04.2006. He is in possession of 32 gts of land , that is the suit schedule property, he has not produced any documents in respect of Sy. No. 163 of yalachaguppe village before the Trial court. Therefore, it is necessary to produce documents in respect of his contention and he prays to allow IA No. 2.

7. It has been admitted by both the parties, that the appellant has filed OS. No. 114-07 against the present Respondent for permanent injunction and it was dismissed as per the Judgement dated 23.03.2013.

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08, When we consider the judgement , the plaintiff - appellant has got marked Ex.P1 to P3 documents on his side.

Ex. P1 is the form No. 10.

Ex. P2 is the Copy of the sale deed dated 17.04.1995.

Ex.P3 is the MR extract.

09. The suit schedule property is land bearing Sy. no. 163 of yalachaguppe village, measuring 32 gts,.

10. The appellant has stated in the plaint that he has purchased the suit schedule property on 17.04.1995 from Muniyappa and the revenue documents are in his name. He has sold 2 acre 28 gts to Krishnaiah on 07.08.2006 and he is enjoying the 32 gts of land, the defendant is the owner adjacent land owner.

11. The defendant has purchased 1 acre 20 gts of land from Lakshamma , in the sale deed it was mentioned as 2 acre. The defendant has no manner of right over the 32 gts of land. The defendant has stated in the said suit that the plaintiff - appellant has sold 1 acre 1 gts of land to him as per the sale deed dated 03.04.2006. The plaintiff has sold 2 acre 19 gts of land to One krishanaiah on 30.10.2006. The plaintiff is not having land in Sy. No. 163. The suit property is belongs to the defendant.

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12. The plaintiff intendeds to produce the copy of the sale deed dated 17.04.1995, Copy of the sale deed dated 07.08.2006, Copy of the sale deed dated 28.02.1997, Copy of the sale deed dated 03.04.2006

13. Now it is necessary to refer to Order 41 rule 27 of CPC it reads as under:-

Para 27 reads as under:-

Production of additional evidence in appellate court:- The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court, but if-

a) The court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not , after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed or.)

b) the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgement, or for any other substantial

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cause.

Or. 41, R. 27 (1)(b) As amended in karnataka.

Rule 27 (1)(b) - The party seeking to adduce additional evidence satisfies the appellate court that such evidence, notwithstanding the exercise of due diligence, was not within his knowledge or could not be produced by him at or before the time when the decree under appeal was passed, or

14. When we consider the documentary evidence produced by appellant, he has obtained the sale deed dated 17.04.1995, sale deed dated 07.08.2006 and sale deed dated 03.04.2006 on 04.10.2015 and he has obtained the copy of the sale deed dated 28.02.1997 on 21.02.2014, the judgement in OS. No. 114/07 was pronounced on 23.03.2013, when we consider the date of the judgement, with the appellant obtained the copy of sale deeds. He has obtained the said documents after the pronouncement of the judgement in OS. No. 114/07. He has not exercised his due diligence in getting those documents and produced before the trial court at the time of evidence. It is not permitted to admit additional evidence in favour of the party who has deliberately withheld the evidence in the trial court. It is also not permitted to lead the fresh evidence on the appellant side. The test is to accept additional evidence is whether the appellate court can be able to pronounce judgement within the material available in the file without additional evidence. But in this case the appellant has produced only

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3 documents before the trial court Ex. P1 to P3, he has not produced the sale deeds in support of his contention. It is the Lacuna of evidence on the side of appellant before the trial court and he has not produced the sale deeds in support of his contention. The respondent can cross examine the witness on the such additional evidence produced by the appellant, if the Respondent is interested, he can also produce his evidence, both the oral and documentary evidence. Because of the lapse on the part of the appellant in not producing the said sale deeds in the trial court and intending to produce the said sale deeds in the appellate court, the inconvenience is caused to the Respondent, therefore, it is necessary to impose cost. Therefore, I am holding this point in the **affirmative**.

15. POINT NO.2:- In view of my findings to point No.1 and the reasons stated therein, I proceed to pass the following:-

ORDER

The I.A. No.2 filed by the plaintiff U/o 41 rule 27 of CPC is hereby allowed on imposing cost of Rs. 500/-

The appellant is permitted to lead additional evidence to mark documents in this appeal only.

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The Respondent if he is interested to produce additional evidence, he is also permitted to produce additional evidence in support of his case.

(K. Mahadeva),
Sr. Civil Judge & JMFC.,
Magadi.