

KASM500007562013



**IN THE COURT OF THE II ADDITIONAL CIVIL JUDGE AND
J.M.F.C., SHIKARIPURA.**

PRESENT: SMT. TEJASWINI K.M.

B.A.L, L.L.M.

**II ADDL. CIVIL JUDGE AND JMFC,
SHIKARIPURA.**

O.S. NO:97/2013

DATED THIS THE 6st DAY OF SEPTEMBER 2021

Plaintiff : Erappa S/o Basappa Mysore,
Age: 48 Years,
Hindu, Agriculturist,
R/o Hunasekoppa Village,
Hitlka: Post, Shikaripura Taluk.

(By Sri. K.S. Vasanth Kuma Adv.)

V/s

Defendants :

- 1. Smt. Prameelamma W/o Sridhara,**
Age: 45 Years, Hindu, Agriculturist,
- 2. Rajashekarappa S/o
Shanthaveerappa,** Age: 44 Years,
Hindu, Agriculturist,
- 3. Satheesha S/o Shanthaveerappa,**
Age: 30 Years, Hindu,

All are R/o Hithlya Village, Shikaripura
Taluk.

(By Sri. K. Vedamurthi Adv for defendant No.1 to 3)

Parties to I.A.No.XII

Applicant/ : Y.S. Rajashekara,
V/s

Opponents/ : Erappa

**ORDER ON APPLICATION FILED U/o 8 Rule 3(A) R/w
Sec. 151 OF C.P.C.**

Instant I.A is filed by the defendant U/o 8 Rule 3(A) R/w Sec. 151 of CPC to produce the documents. The defendant has stated that he could not file some documents along with written statement, which he has obtained, recently. At the time of filing the written statement and giving evidence, he could not collect the documents. Such delay was not intentional. Hence, prays to permit him to produce the documents.

2. On the other hand plaintiff has filed a objection and denied the contents of the I.A. The plaintiff has stated that father of the plaintiff has never executed saled deed. The attestors of the saled deed are already examined and they have not attested the alleged registered saled deed the. The said saled deed is forged and created by im-personification. Hence the plaintiff objects for marking of certified copy of sale deed. Therefore, prays to reject the application.

3. I have heard and perused the materials available on record.

4. Point that would arise for my consideration are as follows.

1. Whether the defendant has made out sufficient grounds to permit to produce additional documents under sec 8 Rule 3(A) of Cr.P.C. as prayed for?

2. What order?

5. My answer to above points are as under;

Point No.1 : In the Affirmative.

Point No.2 : As per the final order for the following....

R E A S O N S

6. **Point No.1:** It is pertinent to note here that the plaintiff has filed suit for Injunction and his evidence is completed. When the stage is posted for evidence of defendant, after giving part chief-examination, the defendant has come up with the present I.A. seeking leave to produced the documents such as certified copy of the sale deed, order copy of Assistant Commissioner, Pahani's, Tax Paid Receipts and mutation extract.

7. The plaintiff contended that the alleged sale deed is concocted for the purpose of the suit and father of the plaintiff has not executed the same. On perusal of written

statement it can be seen that the defendants have mentioned about the sale deed dated: 24.04.1981 and now to substantiate their defence, the defendants want to produce the sale deed.

8. Whether such documents is created or not has to be decided after trial. Since the sale deed is a certified copy given from the Sub register office, it has got it's own presumptive value as to it's execution. Therefore, the plaintiff has to prove his case and disprove the defendant's documents in manner known to law. Mere production of documents and marking of the same is not proof of their contents.

9. Therefore if the defendant is permitted to produce the sale deed and the RTC, Tax paid receipts in his evidence, the plaintiff will get opportunity to cross-examine the defendant on all these documents.

10. At this juncture the court cannot give finding as to admissibility of the documents produced by the defendant. Hence this court is of the view that opportunity has to be given to the defendants to establish their defence. Subject to proof and relevancy of the documents, I.A deserves to be allowed. However for the delayed approach, the defendant shall the pay the cost. Accordingly. The Court proceed to answer point No.1 in the **Affirmative.**

11. POINT NO.II:- For the reasons assigned while discussing Point No.I, court proceeds to pass following...

O R D E R

I.A. filed by the defendant U/o 8 Rule 3(A) R/w Sec. 151 of CPC is hereby allowed with cost of Rs.100/-.

Documents taken on record subject to proof and relevancy.

II ACJ and JMFC., Shikaripura

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PRESENT: SMT. TEJASWINI K.M.

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**II ADDL. CIVIL JUDGE AND JMFC,
SHIKARIPURA.**

O.S. NO:97/2013

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Plaintiff : Erappa S/o Basappa Mysore,
Age: 48 Years,
Hindu, Agriculturist,
R/o Hunasekoppa Village,
Hitlka: Post, Shikaripura Taluk.

(By Sri. K.S. Vasanth Kuma Adv.)

V/s

Defendants :

1. **Smt. Prameelamma W/o Sridhara,**
Age: 45 Years, Hindu, Agriculturist,
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Shanthaveerappa,** Age: 44 Years,
Hindu, Agriculturist,
3. **Satheesha S/o Shanthaveerappa,**
Age: 30 Years, Hindu,

All are R/o Hithlya Village, Shikaripura
Taluk.

(By Sri. K. Vedamurthi Adv for defendant No.1 to 3)

Parties to I.A.No.XIII

Applicant/ : Erappa

V/s

Opponents/ : Pramilamma

**ORDER ON APPLICATION FILED U/o 6 Rule 17 R/w Sec.
151 OF C.P.C.**

Instant I.A is filed by the defendant U/o 6 Rule 17 R/w Sec. 151 OF C.P.C. seeking leave of the Court to amend the plaint schedule property's description. The plaintiff has stated that towards eastern side of suit property land of one Prakash is typed by oversight instead of Road. This is bonadife mistake occurred during typing. Hence. Prays to permit him to correct the description towards eastern side of the suit property as the road.

2. On the other hand the defendant has stated the application is not maintainable under the eyes of law. The application is filed at belated stage and if it is allowed, it will change the nature of suit. Hence. Prays to reject the application.

3. I have heard and perused the materials available on record.

4. Point that would arise for my consideration are as follows.

1. Whether the plaintiff has made out sufficient grounds to allow the application filed under sec 6 Rule 17 of C.P.C. as prayed for?

2. What order?

5. My answer to above points are as under;

Point No.1 : In the Affirmative.

Point No.2 : As per the final order for the following....

REASONS

6. **Point No.1:** It is pertinent to note here that the plaintiff intends to correct the cheque bandi towards eastern side of the suit property as road. But in the plaint it is mentioned as land of Prakash is situated towards eastern side of the suit property. It is typographical error. Hence. Prays to allow the application.

7. The defendant contended that the application is filed at belated stage. The evidence of the plaintiff is completed. At this juncture, the plaintiff intends to correct the description of the suit property. The defendant objected as it is filed at the belated stage. Expect that there is no other considerable objections. By allowing the plaintiff to correct the description of the suit property, towards eastern

side of the suit property, the nature of the suit will not gets changed. It will help the court to identify the property in question. If tehb subjecty matter of suit is unable to be properly identifies, there is everylikelyhood of giving wrong findings. To avoid the multiplicity of proceedings and in ends of justice, I.A deserves to be allowed with cost. It will not effect to the defence of the defendant. Further the defendant can cross examine PW1 in this regard. Hence. The Court proceed to answer point No.1 in the **Affirmative.**

8. **POINT NO.II:-** For the reasons assigned while discussing Point No.I, court proceeds to pass following...

ORDER

I.A. filed by the plaintiff U/o 6 Rule 17 R/w Sec. 151 of CPC is hereby allowed with cost of Rs.100/-.

The plaintiff is permitted to carryout the proposed amendment in the plaint.

II ACJ and JMFC., Shikaripura

