

**IN THE COURT OF ADDITIONAL CIVIL JUDGE & JMFC
AT CHIKKANAYAKANAHALLI**

**Smt.Aparna.R, B.Com, LLB
Addl. Civil Judge & JMFC, Chikkanayakanahalli**

Dated this 12th Day of December, 2023

O. S. No. 40 / 2018

PLAINTIFF : B.L. Prathibha
W/o C. Lokesh
R/o : Madihally Village,
Settikere Hobli,
Chikkanayakanahalli Taluk,
Tumkur District.

- Vs -

DEFENDANT : Chandraiah
S/o Marulaiah
Aged about 55 years
R/o : Madihally Village,
Settikere Hobli,
Chikkanayakanahalli Taluk,
Tumkur District.

I.A.No.VIII

APPLICANT : B.L.Prathibha

- Vs -

OPPONENT : Chandraiah

PREAMBLE

<i>i</i>	<i>Provision under which the application is filed</i>	<i>Under Order XIII Rule 10 R/W Section 151 of CPC</i>
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ii	<i>Relief sought for</i>	<i>Call for entire records in O.S. No.95/2004</i>
iii	<i>Date on which the application is filed</i>	<i>20/02/2023</i>
iv	<i>Number of the application</i>	<i>IA No.VIII</i>
v	<i>Date on which objections are filed by different opponents</i>	<i>25/07/2023</i>
vi	<i>Date on which orders were passed on the said application.</i>	<i>12/12/2023</i>

**ORDERS ON I.A. No.VIII FILED UNDER ORDER XIII
RULE 10 R/W SECTION 151 OF CPC**

1. The Plaintiff has filed the present application under Order XIII Rule 10 of CPC praying to call for the entire records in O.S. No. 95/2004 from the Central Record Room, Tumkur.

2. In the affidavit annexed to this application, the plaintiff contends that she has filed the present suit against the defendant for the relief of declaration of title and permanent injunction. That the defendant has filed his written statement contending that he acquired the suit schedule property by virtue of the decree passed in O.S.No.95/2004. After obtaining the certified copy of the order

sheet, plaint, compromise petition, decree in O.S.No.95/2004 from the Central Record Room, Tumkur, it came to the knowledge of the plaintiff that the signature found on the order sheet and compromise petition are not of her grand father Channamallaiah. Therefore, the plaintiff has also filed a criminal case against the defendant before the Hon'ble Principal Civil Judge & JMFC., Chikkanayakanahalli for the offences punishable U/Section 416, 420, 465 and 474 of IPC. It is further contended that defendant has obtained the decree in O.S. No.95/2004 by impersonation and fraud and hence it is necessary to compare the signatures of her grandfather on the order sheet and compromise petition with the admitted signatures and therefore the original record in OS No. 95/2004 is necessary to be called for. Hence, prays to allow the application.

3. Per contra, the defendant has filed objections stating that the plaintiff and her husband's sister Umadevi have preferred a private complaint in PCR No.77/2019 before the Principal Civil Judge and JMFC., Chikkanayakanahalli against the defendant, which has been registered as CC No.547/2019, which is pending consideration. In

the said criminal case, the aforesaid Umadevi has preferred an application U/Section 91 of Cr.P.C., to call for entire records in O.S.No.95/2004 from the Central Record Room, Tumkur, which application is pending for consideration. In the meantime, the present application has been preferred by the plaintiff herein seeking same relief. It is further contended that there was also a suit for partition filed before the Hon'ble Senior Civil Judge & JMFC., Chikkanayakanahalli in O.S.No.2/2011 which came to be decreed and FDP is also pending consideration. Furthermore, it is also brought to the notice of the defendant that First Appeal before the Hon'ble High Court of Karnataka is also filed in RFA No.442/2016 which is pending consideration. Without disclosing all these facts before this court, the present application has been filed only to harass the defendant and to protract the proceedings. Based on the aforesaid grounds, the defendant prays to dismiss the application.

4. Heard both sides.

5. Upon hearing and perusal of the materials placed on record, the point that has arisen for this Court is ***whether the documents***

called for by the plaintiff is necessary for the adjudication of this case?

6. This Court answers the aforesaid point in ***Negative*** for the following:

REASONS

7. Admittedly, this is a suit filed by the plaintiff for declaration of title and consequential relief of permanent injunction against the defendant. It is the case of the plaintiff that the suit schedule property has fallen to her share during the family partition between the plaintiff, her husband's brother Anandkumar and sister Umadevamma and as per the said partition the plaintiff has taken possession of the suit schedule property under the release deed dated 16.02.2017. Thereafter the katha has been mutated in the name of the plaintiff and since then the plaintiff is in possession and enjoyment of the suit schedule property. Per contra, the Defendant contends that suit schedule property has come to his hands by virtue of the decree passed in O.S.No.95/2004. Pertinently, burden is cast upon the Plaintiff to prove her case independently,

irrespective of the defence taken by the opposite party. In the case on hand, the reliefs sought for by the Plaintiff is restricted to the declaration of title and consequential relief of injunction. No prayer is sought to challenge the the decree passed in O.S.No.95/2004. As also, no averments are forthcoming of having challenged the said decree in any other suit or proceedings. Furthermore, the Defendant has categorically contended that alleging forgery, the Plaintiff has also preferred a private complaint before the Hon'ble Principal Civil Judge and JMFC, Chikkanayakanahalli, which is registered as CC 547/2019, in which case similar application like the one herein has been filed to call for the entire records in O.S.No.95/2004. This conduct of the Plaintiff herein is nothing but abuse of process of law. Since the facts regrading forgery and allied offences are to be exclusively decided under criminal trial, if the records as sought for is called before this Court, it would stall the criminal proceedings in CC 547/2019. Therefore, this Court is of the opinion that the records sought for is not necessary for adjudication of this suit, and hence for the above

reasons, answers the point for consideration in ***Negative*** and proceeds to pass the following:

ORDER

***I.A.No.VIII filed by the
Plaintiff under Order XIII Rule 10
of CPC is hereby dismissed.***

No order as to costs.

(Dictated to the stenographer, transcribed by her, script thereof revised, corrected and then pronounced by me in open Court this 12th Day of December, 2023)

**Sd/-
(Smt.Aparna.R)
Addl. Civil Judge & JMFC, C.N.Halli**