

**IN THE COURT OF THE PRL., CIVIL JUDGE AND JMFC,
GUBBI**

Present : Smt. RADHA.S, B.A. LL.M.,
Prl., Civil Judge and JMFC,
Gubbi.

Dated this the 08th day of January 2021

O.S.No. 72/2014

Plaintiff : Basamma W/o Shivananjappa D/o
Late Chikkabasappa, Aged about 68 years,
R/o Thotasagara, Kasaba Hobli,
Gubbi Taluk.

(By Sri. S.B., Advocate)

V/s

Defendants: Gowramma W/o Karibasavaiah D/o
Late Chikkabasappa, Aged about 75 years,
R/o Thotasagara, Kasaba Hobli,
Gubbi Taluk.

(By Sri. N.A., Advocate)

Applicant : T.K.Gangadhara

V/s

Opponents : Basamma

(Smt. Radha.S)
Prl., Civil Judge & JMFC,
Gubbi.

ORDER ON I.A.NO.12

This is an application filed Under Order 13 Rule 10 (2) and (3)
R/w Section 151 of C.P.C., by the applicant/SPA holder of the
defendant praying the court to issue summons to the proposed witness
as described in the application to produce the original will dated 04-

09-1961 executed by one Chikkabasavaiah in favour of Gowramma on the following grounds:-

2. It is contended by the applicant in his affidavit that, the plaintiff has filed the present suit against his mother for partition and other relief. The defendant and applicant have availed loan from the Kaveri Grameena Bank/Karnataka Grameena Bank Gubbi and at that time of taking the said loan from the bank they have deposited original will in the said bank. Now the present case is at the stage of defendants evidence as such it is just and necessary to disprove the case of the plaintiff and to prove his defense, the said original will is very much necessary for the applicant. Hence, prayed to issue summon to the Manager of the said bank to produce the said original will as mentioned in the application. On these grounds applicant prayed to allow the present application.

3. The counsel for the plaintiff has submitted he has no objections to allow the present application.

4. Heard the arguments of both sides.

5. Perused materials available on record.

6. On the basis of above facts, the point that arises for my consideration is as under:- "Whether the applicant has made out sufficient grounds to allow the present application?"

7. For the reasons stated below, above point is answered in the affirmative.

::R E A S O N S::

8. POINT NO.1:- On careful perusal of the pleadings of the parties and materials on record show that this suit is filed for partition and separate possession in respect of suit schedule properties, more over the defendant has specifically pleaded in her written statement that, her husband has got the suit schedule properties under registered will dated 06-09-1961 as such, the heavy burden is upon the defendant/applicant to prove such defense hence he needs the said document. This court should accommodate all the opportunities to the parties to prove their pleadings. More over the counsel for the plaintiff has submitted no objections to the present application. Hence by considering the facts, circumstances and nature of the suit, this court answers point No. 1 in the affirmative. Hence, I pass the following:-

O R D E R

I.A.No.12 filed Under Order 13 Rule 10 (2) and (3) R/w Section 151 of C.P.C., by the applicant/SPA holder of the defendant is hereby allowed.

Office to issue Witness Summons to the Manager of Karnataka Grameena Bank (Kaveri Grameena Bank) Gubbi branch, to produce "Original will dated 04-09-1961 executed by one Chikkabasavaiah in favour of Gowramma and Karibasavaiah", if PF is paid.

(Dictated to the stenographer directly on computer, corrected by me then the Stenographer has taken print out, after taking printout corrected, signed and then order pronounced by me in open court on 08th day of January 2021.)

(Smt. Radha.S)
Prl. Civil Judge & JMFC.,
Gubbi.