

I.A.No.XII

Applicant: 1. Sri. Satish Krishna Sail.
(Orig.Deft.No.4)

Vs.

Opponents: Shaikh Ummer Hassan Haji Shaikh
(Orig.Plffs.) Ahamad, since deceased by his LRs.
1. Smt. Naseemabi W/o. Shaikh
Ummar Hasan *and others.*

ORDERS ON I.A. NO.XII

This is an application filed by the learned counsel for the defendant No.4 under the provisions of Section 151 of C.P.C. to call for the records in O.S.No.70/1979 disposed on 4.4.1988 on the file of Learned Prl. Civil Judge Court, Karwar for receiving in evidence and confronting the parties on the ground that the plaintiffs have filed the suit for Partition claiming rights one Sri. Shaikh Ummer Hassan Hazi Shaikh Ahmad who has got himself impleaded as defendant No.4 in O.S.No.70/1979. Now, based on the judgment and decree passed in R.A.Nos.29/1988 and 30/1988 on the file of this court, the plaintiffs have filed the suit under mistake of fact and law that the court has gave authority to plaintiffs to file

the suit for Partition. Since the suit is based on judgment and decree passed in O.S.No.70/1979, the plaint, written statement and depositions are required for considering the issues on fact and law raised by both the parties relating to Order 2 Rule 2 of C.P.C. and Section 11 of C.P.C. and also to considered the cause of action to file the present suit. The records in O.S.No.70/1979 will help this court to adjudicate the issues about res-judicata. No prejudice or inconvenience will be caused to the said court, if the records are called for in this case and it is necessary to pass effective judgment. Hence, this application.

2. The learned counsel for the plaintiffs has resisted the application by filing objections contending that the application is not maintainable either under law or on facts. There is no need to call for the records in O.S.No.70/1979, as the certified copies of documents can be obtained and produced in this case. There is an option to obtain the certified copies of the documents. The documents referred in the memo of facts are available to the defendants, if they filed copy of application seeking certified copies and therefore, the contention of the defendants that the entire

file has to be called for is not acceptable and sustainable. The application is not supported by affidavit and therefore, cannot be considered. The documents referred in the memo of facts has already been produced before this court and available in the file. Question of calling for the records does not arise. It is on these grounds, the plaintiffs have prayed for dismissal of the application.

3. I have heard the arguments on both sides and perused the entire records.

4. Now the point that would arises for my consideration is as under :

Whether the defendant No.4 has made out sufficient grounds to call for the original records in O.S.No.70/1979 disposed on 4.4.1988 on the file of Learned Prl. Civil Judge, Karwar and whether the I.A.No.XII filed by the defendant No.4 is deserves to be allowed?

5. On considering the arguments of learned counsels for both the sides and materials on record, now,

my answer to the above point for consideration is in the ***negative***, for the following:

REASONS

6. The plaintiffs have filed this suit against the defendants seeking Partition and Separate Possession of suit schedule properties and consequential relief of Permanent Injunction on the ground that after the death of their father, they were in joint possession and enjoyment of the suit schedule properties along with first defendant and the sale deed dated 12.6.2008 executed by defendants No.1 to 3 in favour of defendant No.4 is not binding on their share and therefore, they are entitled for half share in the suit schedule properties.

7. On service of summons, the defendants appears before the court through their learned counsel and filed written statement denying the material averments made in the plaint by contending that the defendant No.1 is in actual possession of the suit schedule properties to the knowledge of husband of first plaintiff and father of other plaintiffs and therefore, he has perfected his title over half share claimed

by the plaintiffs by way of adverse possession and defendant No.4 is the bonafide purchaser of the suit schedule properties under the Registered Sal Deed dated 12.6.2008 executed by defendants No.1 to 3. Based on the above pleadings, this court has framed the issues on 23.11.2018.

8. On behalf of plaintiffs, the plaintiff No.6 has been examined as P.W.1 and got the documents marked as Exs.P.1 to P.11. It is at this stage of proceedings, when the case is set down for the evidence of defendants' side, the defendant No.4 has filed this application to call for original records in O.S.No.70/1979. According to defendant No.4, the plaintiffs have filed this suit based on the judgment and decree passed in O.S.No.70/1979 and therefore, the plaint, written statement and depositions of the parties in O.S.No.70/1979 are necessary to consider Order 2 Rule 2 R/W. Sec.11 of C.P.C. and also to pass effective judgments. But, it is pertinent to note here that the matter is relates to the year 2011. Admittedly, the stage of the suit is for evidence of defendants' side. The suit bearing O.S.No.70/1979 was disposed on 4.4.1988. The defendant

No.4 wants to confront the plaint, written statement and depositions of the parties in O.S.No.70/1979 is available on the file of Prl. Civil Judge, Karwar or at least in the Central Record Room. Under these circumstances, the defendant No.4 can definitely file necessary copy of the application and he can obtained certified copies of the plaint, written statement, depositions including judgment and decree in O.S.No.70/1979 and then to produce the same before this court and get it marked in his evidence or he can also confront those documents to the witnesses. Under these circumstances, question of calling for the entire original records in O.S.No.70/1979 does not arise. Moreover, the defendant No.4 has already produced copies of plaint, written statement, depositions including judgment and decree passed on 4.4.1988 before this court and they are available on record. Under these circumstances, question of again call for the entire original records in O.S.No.70/1979 to this court does not arise. It is in this sense, I hold that the defendant No.4 has not made out any grounds to call for entire records in O.S.No.70/1979 to this court and application filed by the defendant No.4 under the provisions

of Section 151 of C.P.C. is deserves to dismissed with costs.
Hence, I answer above point for consideration is in the
negative and proceed to following:

:ORDER :

I.A.No.XII filed by the defendant No.4
under the provisions of Section 151 of
C.P.C. is deserves to be dismissed with
costs.

(Dictated to the Stenographer, transcribed by her, revised
and corrected by me, signed and then pronounced in the
Open Court on this the **22nd Day of February, 2021.**)

(N.M. Ramesha)
Prl. Senior Civil Judge,
Karwar.

