



**I.A. NO.X**

**Plaintiff:** 1. Smt. Parvati W/o. Shivappa  
**Applicant** Punnuswamy, **L.R.'s of plaintiff.**  
1(A) Sri. Manjunath S/o. Ramg Swami,

Vs.

**Defendants:** 1. Vanita W/o. Keshav Naik  
**Opponents** and others.

**ORDERS ON I.A. NO.X**

This is an application filed by the learned counsel for the plaintiff under the provisions of Order XVI Rule 1 and 2 R/W. Section 151 of C.P.C. to allow the plaintiff to examine the Assistant Director of Land Records, Karwar as a witness and direct the said witness to produce the originals of the following documents:

- "1. Tippani of Survey No.231A1/1A1(measuring 0-7-0) and 231/A of Baad I village in Karwar Taluk and its Kharab entries and its Map.  
Form Number XII and Form XI.
2. Subsequent Hissa entries and its Form IV, IX and XII.
3. Extract of Karnataka Revision settlement akarband of Plaintiff and Defendants lands.

4. P.T. sheets Maps of the entire lands of the Survey No.231A1/1A1 and 231/A from 1973 to as on today with subsequent Hissa and sub-divisions.
5. Non Agriculture Sanad (Order) issued to the defendants Survey No.231A/1A1K measuring 0-11-0 and Survey No.231A/A1A1 measuring 0-6-0 and its KJP and all the N.A. Sanad are issued in respect of the Survey No.231A Baad-I village.
6. Detail of Kharab land merged into Tari and it's earlier Kharab documents (More particularly documents division land between plaintiff and defendants land and Maps of the showing road and the Kharab of 0-3-0 of land situated in the defendants land Survey Number 231 of Baad I village as per mentioned in the Hissa Karband and Hissa Form) and give evidence on said records.

2. One Shri. Manjunath S/o. Rang Swami who is the legal representative of plaintiff has sworn to affidavit and stated that he is the owner of suit land bearing Survey No.231A/1A1, measuring 7 gunthas 4 annas out of an area of 28 gunthas of Baad-I village and its original No.231A1 is measuring 16 gunthas and the said lands were not divided between his land and the land of defendants till today. The said documents are in the custody of Assistant Director of Land Records, Karwar. Therefore, it is necessary to issue summons to Assistant Director of Land Records, Karwar to

produce the documents and to give evidence on the said documents.

3. The learned counsel for defendants has resisted the application by filing objections contending that the application is contrary to law and true facts of the case. The plaintiff has already filed similar application in I.A.No.IX and got it dismissed as not pressed and filed this application with minor modifications. This is a suit for partition and separate possession and hand over the possession of the suit land with consequential relief of injunction. Therefore, the documents sought to be produced from ADLR, Karwar are irrelevant or unconcerned so far as the adjudication of the suit is concerned. As per rule 80(2) of the Karnataka Civil Rules of Practice 1967, every application to summon the production of documents in the custody of public officer shall be supported by an affidavit setting out (i) the document or documents, the production of which is required (ii) the relevancy of the document or documents, and (iii) in cases where the production of a certified copy would meet the purpose, whether an application was made to the proper officer for a certified copy of copies and the result of such application. But, though the plaintiff has mentioned the

documents required to be produced by filing an affidavit, he did not comply with the mandatory requirements of clause (ii) and (iii) of said rule. The plaintiff has not made out any grounds to summon the ADLR, Karwar with documents mentioned in interim application. The plaintiff has filed this application to protract the proceedings and to defeat delivery of speedy justice. It is on these grounds, the learned counsel for defendants has prayed for dismissal of the application.

4. I have heard the arguments on both sides and perused the I.A., affidavit, objections and entire records.

5. Now the points that would arise for my consideration are as under :

1. Whether the plaintiff has made out sufficient grounds to allow them to examine the Assistant Director of Land Records, Karwar?
2. Whether the plaintiff has made out sufficient grounds to direct the Assistant Director of Land Records, Karwar to produce the originals of documents mentioned in the application?
3. What order?

6. On considering the arguments of both the sides and the materials placed on record, now my answer to the above points are as under:

Point No.1: In the **affirmative**.

Point No.2: In the **negative**.

Point No.3: As per final order, for the following:

### **REASONS**

7. **Point No.1**:- The plaintiff has filed this suit against the defendants to direct the defendants No.1 to 4 to hand over the possession of suit schedule property to the plaintiff and consequential relief of permanent injunction restraining the defendants No.1 to 13 from interfering with his peaceful possession and enjoyment of the suit schedule property. The defendants have resisted the suit by filing detailed written statement. This court has framed the issues on 30.11.2018. The plaintiff got himself examined as P.W.1 and got the documents marked as Exs.P.1 to P.9. The plaintiff has examined one independent witness as P.W.2.

8. It is at this stage of proceedings and when the case is set down for further evidence of plaintiff's side, this

present application being filed seeking permission to allow them to examine the Assistant Director of Land Records, Karwar and directed the Assistant Director of Land Records, Karwar to produce the originals of documents mentioned in the application.

9. On perusal of records and order-sheet, it indicate that the plaintiff already filed I.A.No.VIII under the provisions of Order XVI Rule 1 and 2 R/W. Sec.151 of C.P.C. seeking permission to examine one witness by name Shri. Ashok Budya Pednekar which was came to be allowed with no objection from the learned counsel for the defendants and accordingly, the plaintiff has examined the said witness as P.W.2 before the court.

10. As could be seen from the records, the plaintiff had filed similar application vide I.A.No.IX under the provisions of Order XVI Rule 1 and 2 R/W. Section 151 of C.P.C. seeking permission to examine the Assistant Director of Land Records, Karwar and to direct the witness to produce the documents. But, the plaintiff got the said application dismissed as not pressed and accordingly, it was dismissed as not pressed vide order dated 18.2.2020.

11. Now, under the present application, the plaintiff has sought for permission to examine the Assistant Director of Land Records, Karwar. Admittedly, the stage of the suit is for further evidence of plaintiff's side. The plaintiff has contended that he is the owner in possession of the suit property and the defendants have encroached 7 gunthas 4 annas in the suit property. But, the defendants have denied the said fact by contending that the suit of the plaintiff is hit by res-judicata and the plaintiff is a stranger to the family of deceased plaintiff and therefore, the plaintiff is not entitled for the relief as sought for in the plaint.

12. According to plaintiff, the original suit survey number has not been divided between the land of plaintiff and defendants till today. Under these circumstances, whether the survey number has been divided or not between the land of plaintiff and defendants is a matter which requires evaluation of evidence to be recorded at the trial and also requires consideration in this suit and in that view of the matter, the evidence of witness sought to be summoned is just and necessary to adjudicate the real controversy between the parties and therefore, it is necessary to summon the witness to give evidence. It is in

this sense, I hold that the plaintiff has made out sufficient grounds to permit them to examine Assistant Director of Land Records, Karwar to give evidence. Hence, ***I answer point No.1 in the affirmative.***

13. **Point No.2**:- The plaintiff under this application itself has also sought for direction to Assistant Director of Land Records, Karwar to produce the originals of the documents as mentioned in the application. In other words, the plaintiff has not only seeking permission to examine Assistant Director of Land Records, Karwar before the court under the application, but also sought for direction to produce the originals of documents mentioned in the application. But, as per the provisions of Rule 23 of Karnataka Civil Rules of Practice 1967, there shall be separate application in respect of each distinct prayer. When several prayers are combined in one application, the court may direct the applicant to confine the application only to one of such prayers and to file a separate application in respect of each of others. But, in the present case, the plaintiff has sought for two prayers in single application which is not permissible as per the provisions of Rule 23 of Rule 23 of Karnataka Civil Rules of Practice 1967.

14. Be that as it may, the plaintiff has sought for direction to Assistant Director of Land Records, Karwar to produce the original of documents viz. Tippani of Survey No.231A1/1A1, Form No.XII and Form XI, Subsequent Hissa entries and its Form IV, IX and XII, Extract of Karnataka Revision settlement akarband, P.T. sheets, Maps of the entire lands of Survey No. 231A1/ 1A1 and 231/A from 1973 to till date, Sanad and details of Kharab land merged into Tari land.

15. But, it is not in dispute that the documents sought to be summoned are all public documents available before public office. It is not the case of the plaintiff that he has applied for certified copies of those documents before the public office and the public servant has refused to issue such certified copies of said documents. No such grounds are made out in the affidavit annexed to I.A.No.X. If really, the plaintiff wants to produce the documents mentioned in the application, he can definitely obtain the certified copies of the said documents by filing necessary application before the public office, produce the same before the court and get it marked in his evidence, if he is advised to do so. But, he

has not done so. No explanation as such forthcoming in the affidavit annexed to I.A.No.X.

16. Further, as per the provisions of Sub-Rule 2 of Rule 80 of Karnataka Civil Rules of Practice, 1967, every application for such summons, shall be supported by an affidavit setting out (i) the document or documents, the production of which is required (ii) the relevancy of the document or documents, and (iii) in cases where the production of a certified copy would meet the purpose, whether an application was made to the proper officer for a certified copy of copies and the result of such application.

17. Now, let us consider as to whether the plaintiff has complied these mandates of provisions of Sub-Rule 2 Rule 80 of Karnataka Civil Rules of Practice, 1967. In the affidavit annexed to I.A.No.X, the plaintiff has stated that he is the owner of land bearing Survey No.231A/1A1, measuring 7 gunthas 4 annas out of an area of 28 gunthas. The original Survey No.231A1 measuring 16 gunthas was not divided between his land and the land of defendants till today and therefore, the Assistant Director of Land Records, Karwar may be directed to produce the documents at

Sl.No.1 to 4. The documents are in the custody of Assistant Director of Land Records, Karwar.

18. But, except these facts, the plaintiff has not stated anything in the affidavit annexed to I.A.No.X. No doubt, the plaintiff has mentioned the documents required to be produced by Assistant Director of Land Records, Karwar by filing an affidavit. But, the plaintiff has not stated as to the relevancy of the documents and as to whether he has applied application to get the certified copies of the said documents and as to the result of such application and thereby, failed to comply Clause-II and III of Sub-Rule 2 of Rule 80 of Karnataka Civil Rules of Practice,1967. No explanation as such forthcoming in the affidavit annexed to I.A.No.X for non-compliance of said provisions of law. In the absence of such compliance, the public servant cannot be directed to produce the originals of the documents mentioned in the application.

19. At the cost of repetition, it is to be noted here that the plaintiff can definitely obtain the certified copies of the documents, produce the same before the court and get it marked in his evidence if he is advised to do so.

Therefore, for the reasons discussed above, this court is of the considered view that the plaintiff has not made out any sufficient grounds to direct the Assistant Director of Land Records, Karwar to produce the originals of the documents mentioned in the application. Hence, ***I answer point No.2 in the negative.***

20. **Point No.3**:- In view of my findings on points No.1 and 2, I proceed to pass the following:

**:ORDER :**

I.A.No.X filed by the plaintiff under the provisions of Order XVI Rule 1 and 2 R/W. Section 151 of C.P.C. is hereby partly allowed with cost of Rs.500/- to be payable to the defendants.

The plaintiff is permitted to examine Assistant Director of Land Records, Karwar as a witness on his behalf.

The plaintiff is directed to pay the expenses of the witness as contemplated under the provisions of Rule 2 of Order XVI of C.P.C.

Issue summons to witness i.e. Assistant Director of Land Records, Karwar after remittance of expenses of witness.

The application with respect to direct the Assistant Director of Land Records, Karwar to produce the originals of the documents mentioned in the application is hereby dismissed.

However, it is made it clear that the plaintiff is at liberty to obtain the certified copies of the documents by filing necessary application before public office and produce the same before the court if he is advised to do so.

(Dictated to the Stenographer, transcribed by her, revised and corrected by me, signed and then pronounced in the Open Court on this the **16<sup>th</sup> Day of September, 2020.**)

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

