



and XII with maps and N.A. order and its Hissa done in original Survey No.231A measuring 1 acre 39 gunthas and to give evidence, to direct the witness No.2 to bring the entire file of permission given to construct the compound wall bearing No.242/2000-01, dated 30.3.2001 and direct the witness No.3 to bring the entire file of permission to give construct the compound wall bearing No.CR:74/2002-2002 dated 25.7.2001 along with P. T. map of the suit land and to give evidence.

2. One Shri. Swamy Manjunath, who is the legal representative of plaintiff has sworn to affidavit and stated that the ADLR was examined who deposed that some of the documents of suit lands are in the possession of Tahasildar, Karwar. The witnesses are the material witnesses to the case of the plaintiff. Hence, it is necessary to examine the witnesses to prove the case based on the documents sought to be summoned and also to prove the construction of compound wall as per the rules and regulations or violated the conditions. It is also necessary to direct the witnesses to bring the documents sought to be summoned in the application. It is on these grounds, the plaintiff has prayed for allow the application.

3. The learned counsel for defendants has resisted the application by filing objections contending that the plaintiff has filed an identical interim application to summon ADLR with documents. The court while passing the order on interim application has observed that two prayers cannot be made in the application as per the provisions of Karnataka Civil Rules of Practice. The plaintiff has not complied the provisions of Rule 80(2) of the Karnataka Civil Rules of Practice. The court has permitted the plaintiff to examine ADLR, Karwar as a witness and accordingly, examined. The plaintiff has filed the interim application without following the observations made by the court. The plaintiff is in the habit of submitting series of interim applications to protract the proceedings and to defeat the delivery of speedy justice. The plaintiff has prayed to issue summons to Tahsildar, Karwar Development Authority and Commissioner of City Municipal Council, Karwar with file of permission given to construct compound wall. But, the plaintiff has sought for possession of the suit land with consequential relief of injunction. Hence, the files pertaining to grant of permission to construct the compound wall are irrelevant to the subject matter of the suit. The plaintiff has made the

prayer without any relevancy. The plaintiff has not made out any grounds to summon the witnesses. It is on these grounds, the defendants have 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 shows sufficient cause for the omission to mention the names of such witnesses in the list of witnesses and whether the plaintiff has made out sufficient grounds to condone the delay in filing the witnesses list and to summon the witnesses?
2. Whether the application filed by the plaintiff to issue summons to the witnesses and to produce the documents is maintainable without

complying the mandatory provisions of Rule 18(1), Rule 18(3), Rule 23 and Rule 80(2) of Karnataka Civil Rules of Practice and whether the plaintiff has made out sufficient grounds to direct the witnesses to produce the documents mentioned in the application?

3. What order?

6. On considering the arguments of both the sides and provisions of Order XVI Rule 1 and 2 R/W. Sec.151 of C.P.C., Rule 18(1), Rule 18(3), Rule 23 and Rule 80(2) of Karnataka Civil Rules of Practice, now my answer to the above points are as under:

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

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

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

## **REASONS**

7. **Points No.1 and 2**:- These two points are inter-related and inter-connected to each other. Therefore, for the sake of convenience, clarity and also to avoid repetition of facts being narrated separately, these two points are taken up together for common discussion.

8. The learned counsel for plaintiff has argued with force that the Assistant Director of Land Records was examined before the court who deposed that some of the suit land documents are in the possession of Tahasildar and therefore, it is necessary to examine Tahasildar before the court to prove the case. The Commissioner of Karwar Development Authority and City Municipal Council have given permission to construct the compound wall and therefore, it is necessary to examine those witnesses and the documents sought to be summoned from all the witnesses are just and necessary for just decision of the case. The plaintiff is entitled to summon the witnesses for evidence and to produce the documents to prove his case and therefore, it is just and necessary to allow the application.

9. In support of his submission, the learned counsel for plaintiff has relied upon a decision reported in **2000(5) Kar. L.J. Sh.N.18** in between **G. Thippeswamy vs. Thippeswamy and another**, wherein, while dealing with the provisions of Order 11 Rule 12 and Order 16 Rule 1 of C.P.C., the Hon'ble High Court of Karnataka has held that normally in a trial any party should be allowed to conduct the trial in the way he chooses by examining witnesses, by summoning the documents. This proceeding cannot be stopped in midway. Summoning the documents can never be the case decided. Summoning of document or a person can be done by procedural aspects without calling upon a judge to exercise the judicial powers on that. Litigant is entitled to summon witnesses and produce documents to prove his case.

10. Per contra, the learned counsel for defendants has vehemently contended that the application filed by the plaintiff is contrary to law, true facts of the case and it is the abuse of process of law. The plaintiff has already filed similar applications to summon the ADLR, Karwar with documents and while passing the order, the court has already observed that two prayers cannot be sought for in

one application as per the provisions of Karnataka Civil Rules of Practice and the plaintiff has not complied the provisions of Rule 80(2) of Karnataka Civil Rules of Practice. The court has already permitted the plaintiff to examine ADLR, Karwar who has been examined before the court. But, the plaintiff has not complied the observations made by the court. The plaintiff is in the habit of submitting series of interim applications to protract the proceedings and to delay the disposal of the case. The plaintiff has filed the suit for Partition and Separate Possession and therefore, the documents sought to be produced are not necessary and the witnesses sought to be summoned also not necessary and hence the application is liable to be dismissed.

11. In the light of the arguments canvassed on both the side, I have carefully gone through the principles laid in the cited decision and entire records.

12. The plaintiff has filed this suit against the defendants to direct the defendants to hand over the possession of suit schedule property and consequential relief of permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment

of the suit schedule property. The defendants have resisted the suit by filing 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.13. The plaintiff has examined two witnesses as P.W.2 and 3.

13. 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 to issue summons to Tahasildar, Karwar, Commissioner of Karwar Development Authority, Karwar, and Commissioner of City Municipal Council, Karwar and also to produce the documents mentioned in the application.

14. But, on careful perusal of records and order-sheet, it would indicate that the plaintiff had already filed similar application under 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 the plaintiff has examined the said witness as P.W.2.

15. As could be seen from the records, the plaintiff had also 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 vide order dated 18.2.2020.

16. As could be seen from the records, the plaintiff had also filed similar application vide I.A.No.X under the provisions of Order XVI Rule 1 and 2 R/W. Sec.151 of C.P.C. seeking permission to examine ADLR of Karwar and to produce the documents which was came to be partly allowed vide order dated 16.9.2020 and the plaintiff has examined the Assistant Director of Land Records of Karwar as P.W.3. However, the said application was partly dismissed with respect to direct the ADLR, Karwar to produce the originals of the documents mentioned in the application and liberty was given to plaintiff to obtain the certified copy of documents by filing necessary application before the public office and produce the same before the

court and get it marked in his evidence if he is advised to do so.

17. Now, under the present application, the plaintiff has sought for permission to examine the Tahasildar, Karwar, Commissioner of Karwar Development Authority, Karwar and Commissioner of City Municipal Council, Karwar and also to direct them to produce the documents as mentioned in the application.

18. As per the provisions of Order XVI Rule 1 Sub-Rule 1 of C.P.C. on or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

19. As per Sub-Rule 2 of Rule 1 of Order XVI of C.P.C. a party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

20. As per Sub-Rule 3 of Rule 1 of Order XVI of C.P.C. the Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

21. But, in the present case, as already stated above, this court based on the pleadings of both the parties, has framed the issues on 30.11.2018. But, the plaintiff has not filed list of witnesses within 15 days after the date on which the issues were settled. However, considering the nature of suit and also reasons assigned in I.A.No.VIII and X, this court has already permitted the plaintiff to file list of witnesses by condoning the delay in filing the application and the plaintiff was permitted to examine the witnesses mentioned in the application. Now, let us consider as to whether the plaintiff could able to shows sufficient cause for omission to mention the names of these three witnesses in the list.

22. In the affidavit annexed to I.A.No.XIII, it is stated that ADLR was examined before the court who deposed that some of the documents of suit land are with Tahasildar. It is further stated that the witnesses No.2 and 3 have given permission to construct the compound wall and therefore, it is necessary to examine these material witnesses.

23. But, except these facts, the plaintiff has not stated anything in the affidavit annexed to I.A.No.XIII, as to why the name of witnesses were omitted to mention in the list of witnesses. If really, these three witnesses are the material witnesses to prove the case of the plaintiff, then the plaintiff could have mention those names in the earlier list of witnesses while filing I.A.No.VII to X etc. But, he has not done so. No explanation as such forthcoming in the affidavit annexed to I.A.No.XIII. In the absence of such an explanation and in the absence of compliance of provisions of Order XVI Rule I Sub-Rule 3 of C.P.C. the delay in filing list of witnesses cannot be condoned and the plaintiff cannot be permitted to examine the witnesses mentioned in the application.

24. As per the provisions of Rule 18(1) of Karnataka Civil Rules of Practice, 1967, every interlocutory application shall be indicated by the abbreviation "I.A." and shall be consecutively numbered in each suit, appeal or proceeding in which it is filed.

25. As per Rule 18(3) of the Karnataka Civil Rules of Practice, 1967, every interlocutory application shall bear the cause title of the main matter in which it is made and shall set out the names of the applicants and the opponents and their respective ranks in the main matter, the provision of law under which it is made and the prayer or relief sought, in clear and precise terms.

26. As per the provisions of Rule 23 of Karnataka Civil Rules of Practice, 1967, there shall be a 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 the others.

27. But, in the present case, the plaintiff has not only seeking permission to examine Tahasildar, Karwar,

Commissioner of Karwar Development Authority, Karwar, Commissioner of City Municipal Council, Karwar before the court under this application, but also sought for direction to produce the documents mentioned in the application. The plaintiff has sought for two prayers in single application without indicating the observation of 'I.A' and also without the cause title of main matter in which it is made and without setting out the names of applicants and opponents and their respective ranks in the main matter. Under these circumstances, in the absence of compliance of mandatory provisions of Rule 18(1), Rule 18(3), Rule 23 of Karnataka Civil Rules of Practice, the very application filed by the plaintiff is not maintainable.

28. Be that as it may, the plaintiff has sought for direction to Tahasildar, Karwar to bring the documents of suit land bearing Survey No.231/A1A1, 231A/1A1k, 231A/1A1D, 231A/1AB1, 231A/1A1B2 and 231A/1A1A and Form No.XI and Form No.XII with map and N.A. order and its Hissa. The plaintiff has also sought for direction to commissioner of Karwar Development Authority and Commissioner of City Municipal Council, Karwar to bring the

entire file of permission to give construct the compound wall.

29. But, it is not in dispute that all the documents sought to be summoned or produced 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 public office to issue such certified copies of such documents. No such grounds are made out in the affidavit annexed to I.A.No.XIII.

30. It is pertinent to note here that if really, the plaintiff wants to produce the documents mentioned in the application, then he could have obtained the certified copy of the said documents by filing necessary application before the public office and produce the same before the court and get it marked those documents 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.XIII.

31. As per the provisions of Sub-Rule 2 of Rule 80 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.

32. Now, let us consider as to whether the plaintiff has complied these mandates of provisions of Sub-Rule 2 of Rule 80 of Karnataka Civil Rules of Practice 1967. In the affidavit annexed to I.A.XIII, the plaintiff has stated that the ADLR was examined before the court who deposed that some of the suit lands documents are with the Tahasildar, Karwar. Hence, it is necessary to examine the Tahasildar to prove the case based on the documents mentioned in the application. It is further stated that witnesses No.2 and 3 have given permission to construct the compound wall and therefore, it is necessary to examine them before the court on the basis of the documents sought to be summoned which are mentioned in the application.

33. But, except these facts, the plaintiff has not stated anything in the affidavit annexed to I.A.No.XIII. No

doubt, the plaintiff has mentioned the documents required to be produced by the Tahasildar, Karwar, Commissioner of Karwar Development Authority, Karwar and Commissioner of City Municipal Council, 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 the 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. No explanation as such forthcoming in the affidavit annexed to I.A.No.XIII for non-compliance of said provisions of law. In the absence of such compliance, the public servant cannot be directed to produce the documents mentioned in the application.

34. At the cost of repetition, it is to be noted here that the plaintiff can definitely obtain the certified copies of the documents by filing necessary application, produce the same before the court and get it marked in his evidence if he is advised to do so. Similar liberty was also given to the plaintiff while passing the order on I.A.No.X dated 16.9.2020. But, the plaintiff has not done so. No explanation as such forthcoming in the affidavit annexed to I.A.No.XIII.

35. It is pertinent to note here that the plaintiff is in the habit of filing similar applications one after the other without complying the provisions of Order XVI Rule 1(3) of C.P.C. and also the provisions of Rule 18(1), Rule 18(3), Rule 23 and Rule 80(2) of Karnataka Civil Rules of Practice. Therefore, the way in which the plaintiff has persuaded this matter by filing this kind of applications without complying the mandatory provisions of law, this application is deserves to be dismissed with costs.

36. Under these circumstances, the arguments of learned counsel for plaintiff that the witnesses sought to be summoned and the documents sought to be produced are just and necessary for just decision of the case and the plaintiff can sought for several reliefs in a single application and therefore, the application is maintainable and hence, it is just and necessary to summon the witnesses and also summon the documents is not sustainable under law and therefore, cannot be accepted and the decision cited in this regard also not applicable to the present facts and circumstances of the case.

37. On the other hand, there is some legal force in the submission of the learned counsel for defendants that the plaintiff has already examined ADLR, Karwar before the court and therefore, question of again summoning the witnesses and also summoning the documents does not arise and the plaintiff has filed the application without complying the mandatory provisions of Code of Civil Procedure and also Karnataka Civil Rules of Practice and therefore, the application is liable to be dismissed.

38. Therefore, for the reasons discussed above, this court is of the considered view that the plaintiff has failed to show sufficient cause for the omission to mention the names of witnesses in the list of witnesses and the application is also not maintainable for want of compliance of provisions of Rule 18(1), Rule 18(3), Rule 23 and Rule 80(2) of Karnataka Civil Rules of Practice. Hence, ***I answer points No.1 and 2 in the negative.***

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

**:ORDER :**

I.A.No.XIII filed by the learned counsel for plaintiff under the provisions of Order XVI Rule 1 and 2 R/W. Section 151 of C.P.C. is hereby dismissed with cost of Rs.1,000/- to be payable to the defendants.

(Dictated to the Stenographer, transcribed by her, revised and corrected by me, signed and then pronounced in the Open Court on this the **18<sup>th</sup> Day of December, 2020.**)

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

