

COMMON ORDERS ON I.A. No.XI AND XII

This order arises out of the applications filed under Section 151 and Under Order XIII Rule 1A of CPC seeking to reopen the stage and recall D.W.1 for his further chief examination in order to produce and mark the documents on his behalf.

2. The reasons assigned in an affidavit is that the plaintiffs have filed a false and frivolous suit and there is no relationship between Kalyani and Nagamma as contended by the plaintiffs. The documents which he intends to produce are pertaining to the subject matter of the suit which are very much essential which throws light on the real controversy between the parties. The said documents were misplaced, hence now he intends to produce the same. On all these grounds prays to allow the said application.

3. Per contra, the counsel for the plaintiffs have filed objections refuting the said application as contrary to law and true facts of the case. It is admitted that the documents sought to be produced are in the possession of the defendant, hence the defendant has to show the cogent reasons as to what prevented him from producing the documents along with pleadings at the time of filing of the written statement. It is mandatory on the part of the defendant to produce all documents on which he is relying but the defendant has

deliberately not produced documents and the said documents are not pertaining to the land which is the subject matter of the suit and the same have no relevancy in the adjudication of the case and the said documents are fabricated and concocted. On all these grounds prays to dismiss the said applications.

4. Heard arguments from both the respective Counsels appearing for the Plaintiffs as well as Defendant .

5. After going through the application and objection statement, points arise for my consideration are ;

1. Whether the I.A. No.XI and XII filed on behalf of the Defendants deserves to be allowed?

2. What order?

6. My answer to the above points are as under:

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

Point No.2 : As per the final order for the following:

REASONS

7. **Point No.1** : The present suit is one filed seeking the relief of Declaration and Cancellation of sale deed and Will dated and consequential relief of recovery of possession. After closure of evidence of plaintiffs side, defendant stepped into witness box and has been examined as D.W.1 and got marked as many as

Ex.D.1 to D.9 and when the case is posted for cross-examination of D.W.1, the instant application are moved seeking to recall D.W.1 for production and marking of the documents.

8. The documents which the defendant intends to produce are Form No.V applied before the Tahasildar, Ankola, certified copy of Mutation Entry No.2706, death certificate of deceased Nagamma and certified copy of varasa register. The reasons assigned in an affidavit is there is no relationship between Kalyani and Nagamma as claimed by the plaintiffs and the documents which he intends to produce are relevant which throws a light on real controversy between the parties but how the said documents are related to the present case on hand is not explained because admittedly, the said documents are not the subject matter of the suit. The plaintiffs in their pleadings contended that deceased Govind Ramayya @ Anant Shetty had two names by name Kalyani and Nagamma but the defendant in his affidavit accompanied with the present applications contended that there is no relationship between Kalyani and Nagamma as contended by the plaintiffs. But on perusal of the written statement, though at initial paragraphs, the defendant has disputed the relationship but at para No.11 of his written statement clearly admitted that deceased Govind Sheety had two wives by name Kalyani and Nagamma. It is further contended that Nagamma had filed Form No.7 before Land Tribunal in respect of Sy.No.587/3 and Sy.No.29/1 for

conferring occupancy rights in her favour. But the documents Form No.V and Mutation Entry which the defendant intends to produce now are no where relevant to the subject matter of the suit and there appears absolutely no dispute in respect of death of Nagamma and in respect of deceased Govind Shetty having two wives as per varsa shej register, as such the said documents are not at all necessary to resolve real controversy between the parties. Even it has not been stated in the affidavit as to what the defendant intends to prove by producing and marking those documents when the same are not pertaining to the subject matter of the suit.. It is also pertinent to note here that there is no reference in respect of the said documents in the written statement of defendant. Recently, **the Hon'ble High Court of Jharkand in its decision of Motilal Agarwal Vs. Ram babu Sharma, held that "Even public document itself can't be taken on record when there is no pleading in this regard."**

9. In the present case on hand also, on going through the entire written statement, there is no reference in respect of the said documents and also the said documents are no where relevant to the present on hand. Hence, the applications filed on behalf of the defendant are devoid of merits. With these observations, Point No.1 is answered in **Negative**.

10. **Point No.2**: For the foregoing reasons on Point No.1, **this Court proceeds to pass the following:**

ORDER

The IA No.XI and XII filed by the defendant U/o VIII Rule 1A and Section 151 of CPC are hereby dismissed with costs of Rs.300/-.

For cross of D.W.1.

Sd/-

C/c Civil Judge, Ankola.