

KAUK220000152023



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC,. ANKOLA, AT: ANKOLA.**

Dated this the 04th day of January, 2025.

PRESENT:

Sri. Manohara M. LL.M.
Senior Civil Judge, Ankola.

ORIGINAL SUIT No.01/2023

Plaintiffs: Smt.Seetabai w/o Ramachandra Naik
and others.

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-Vs-

Defendants: U.F.M.Dayanand Krishna Naik and others.

I.A.No.IX

APPLICANT: Dayanand Krishna Naik
Defendant No.1 Age 72 years, Agriculture,
R/o: Mathakeri, Aversa, Po:Aversa,
Taluka Karwar.

V/s

RESPONDENTS: Smt.Seetabai w/o Ramachandra Naik
and others.

ORDER ON IA No.IX

The defendant No.1 filed I.A.No.IX under Order XI Rule 16 R/w Sec.151 of CPC to direct to produce the documents as per the list, which are in possession of plaintiff No.2 and 3 and defendant No.2, 4, 5, 7 and 9.

2. In the memo of facts, in support of this application, the counsel for defendant No.1 stated that the suit is filed for partition and separate possession. The plaintiff Nos.2 and 3, defendant Nos.2, 4, 5, 7 and 9 have entered into agreement of sale with defendant No.1 for the sale of some of the suit schedule property for valid consideration. During the evidence of plaintiff as well as the defendant No.8, the counsel raised the allegation with respect to the sale transaction with the defendant No.1. There is legal document of sale agreement, and pre-mutation 11e map etc is filed and obtained by the plaintiff Nos.2, 3, defendant Nos.2, 4, 5, 7 and 9 from the survey department. During the cross-examination and marking of documents by the counsel for defendant No.1, it is found some admission of execution of sale agreement of the suit property executed between the defendant No.1, plaintiff and other defendants. On the basis of said sale agreement, the defendants and plaintiffs have also applied for the pre-mutation 11E map under (1) application No.1 10071119115327, Map No.10071119115327001 in favour of plaintiff No.2, 2) application No.1 10071119981500, Map

No.10071119981500001 in favour of plaintiff No.3, 3) application No.10071119109732, Map No. 10071119109732001 in favour of defendant No.2, 4) application No.10071119109455, Map No. 10071119109455001 in favour of defendant No.4, 5) application No.10071119115224, Map No. 10071119115224001 in favour of defendant No.5, 6) application No.10071119999015, Map No. 10071119999015001 in favour of defendant no.7, 7) application No.10071119115258, Map No.10071119115258001 in favour of defendant No.9, dated 26.2.2020. The said documents are in possession of plaintiff Nos.2 and 3 and defendant Nos.2,4,5,7,8 and 9. Hence, it is necessary to call for the documents. If the application is allowed, no injustice, inconvenience, loss or damage will be caused to the opponents. On the other hand, if the application is not allowed, injustice, inconvenience, loss and damage will be caused to the him. Hence, it is prayed to allow the application.

3. The learned counsel for the plaintiff filed objections stating that the sale agreement, premutation 11e sketch and application concerned to it and sketch etc. stated by defendant No.1 are not in the possession of plaintiffs. Moreover, the sketch and statement made by survey department are also not in the possession of plaintiffs. Hence, the said documents cannot be produced by the

plaintiffs at this stage and cannot be directed the plaintiffs to produce the said documents. Hence, it is prayed to dismiss the said application.

4. The learned counsel for defendant No.8 filed objection stating that the defendant No.1 has filed the application only to drag and to harass him. There may be proceeding of sale transaction prior to filing of the suit. But, these proceedings were not executed till today. Hence, the said documents are not necessary to decide the case. The documents are not essential and material documents to decide the matter in dispute. Hence, it is prayed to dismiss the application.

5. Having heard both side and having perused the plaint, written statement, IA No.IX, objections and other materials following points arise for consideration:

1. Whether the defendant No.1 has made out grounds to direct plaintiff No.2 and 3 and defendant Nos.2, 4, 5, 7 and 9 to produce the documents as prayed for?

2. What order?

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

Point No.1 : **Partly in the affirmative.**

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

REASONS

7. **Point No.1:** According to the defendant No.1, the plaintiff No.2 and 3 and defendant Nos.2,4,5,7 and 9 have entered into agreement of sale with him for the sale of some of suit schedule property for valid consideration and pre-mutation 11e map etc are filed and obtained by the plaintiff Nos.2, 3, defendant Nos.2,4,5,7 and 9 from the survey department, and the said pre-mutation 11e map filed under (1) application No.1 10071119115327, Map No.10071119115327001 in favour of plaintiff No.2, 2) application No.1 10071119981500, Map No.10071119981500001 in favour of plaintiff No.3, 3) application No.10071119109732, Map No.10071119109732001 in favour of defendant No.2, 4) application No.10071119109455, Map No.10071119109455001 in favour of defendant No.4, 5) application No.10071119115224, Map No.10071119115224001 in favour of defendant No.5, 6) application No.10071119999015, Map No.10071119999015001 in favour of defendant no.7, 7) application No.10071119115258, Map No.10071119115258001 in favour of defendant No.9, dated 26.2.2020, and the said documents are in possession of plaintiff Nos.2 and 3 and defendant

Nos.2,4,5,7 and 9. The defendant No.1 has in his written statement at para No.5 averred that the plaintiffs and remaining defendants i.e., plaintiff Nos.2,3 defendant Nos.2,4,6,7 and 8 have made sale talks to purchase separately the suit schedule property for Rs.1,00,000/- per gunta and also the plaintiff Nos.2 and 3 gave the advance of Rs.20,000/- each, and defendant No.7 to 9 gave advance amount totally of Rs.50,000/-, and defendant No.2 and 4 also made talk with him to purchase 00-09-00 and 00-10-00 respectively, and the plaintiff No.2 and defendant No.1 signed on blank paper to prepare sketch. In this way, the defendant No.1 has pleaded these facts. But, the plaintiffs and defendant No.8 have specifically stated that they do not have the said documents in their possession, and the defendant No.5 and 6 have not filed objections. Moreover, the defendant Nos.7 and 9 are placed Exparte, and though, the defendant Nos.2 and 4 appeared, they have not contested the case. Hence, it is very clear that it is not known whether they have got the said documents or not in their custody. If they are directed to produce the said documents, it could come to light whether the said documents are in their possession or not. As the plaintiffs and defendant No.8 have specifically stated that they have not got the custody of the said documents, the issuance of direction to them to produce the said documents does not arise. Consequently, I answer **point No.1 partly in the**

affirmative.

8. **Point No.2:** In view of my reason on Point No.1, I proceed to pass the following:

ORDER

I.A No.IX filed by defendant No.1 under Order XI Rule 16 R/w Sec.151 of CPC is hereby partly allowed/-.

The defendant Nos. 2,4,5,7 and 9 are directed to produce the documents as stated in the memo of facts of this application if needful is done.

(Dictated to the Stenographer, transcribed by her, transcription corrected by me and then pronounced in the open court on 4th January, 2025)

sd/-

**(MANOHARA M.)
Senior Civil Judge, Ankola.**