

**IN THE COURT OF THE SENIOR CIVIL JUDGE, BHATKAL**

Dated this the 9<sup>th</sup> day of January, 2018

**PRESENT: Sri. D.Raghavendra,**  
B.Com.,LL.B.,  
Senior Civil Judge & JMFC, Bhatkal

**O.S.No. 8 of 2017**

**Plaintiffs:-** Smt. Bibi Ayesha & others

**-Vs-**

**Defenant/s:-** Sri. Bava Ameer Bantwal & others

**I.A.NO. XX**

**Applicant/s:-** Smt. Bibi Ayesha & others  
**....Plaintiffs**

**-Vs-**

**Opponent/s:-** Sri. Bava Ameer Bantwal & others  
**....Defendants**

**ORDER ON I.A.NO. XX**

The plaintiff has filed IA No. XX U/O 14 Rule 5 of CPC  
praying to recast issue No. 1 to 4 has detailed below:-

1. Whether the defendants prove that the purported gift deed dt. 20-09-2012 mentioned in the plaint is true valid and genuine?

2. Whether the defendants prove that the purported gift deed dt. 2-10-2012 mentioned in the plaint is true valid and genuine?
3. Whether the defendants prove that the purported gift deed dt. 27-12-2013 and the pramanapatra mentioned in the plaint are true genuine and valid?
4. Whether the defendants prove that the purported registered sale deed dt. 31-05-2014 is true valid and genuine and supported by consideration?

2. The application is accompanied by an affidavit sworn by plaintiff No.1(a). In his affidavit he has stated that after perusing of certified copy of issues framed in the above suit he came to know that the issue No.1 to 4 incorrectly framed. The plaintiffs have alleged that purported gift deeds and sale deed are all bogus, fraudulent, forged, sham and illegal. The defendants contended they are all genuine and claimed title there under. Therefore, the burden to prove that the said documents are genuine lies upon the defendants and not upon the plaintiffs. Only after the defendants to prove genuineness the burden could

be shifted on the plaintiffs. The plaintiffs relying upon the decision of Hon'ble Supreme Court reported in 2011 SAR (Civil) 712 and AIR 2016 Chattisgarh 53. The plaintiffs are not to prove the purported documents are bogus etc., but the defendants to prove genuine. Therefore, issue No.1 to 4 incorrectly framed by casting burden on the plaintiffs. If the issues are not recanted the plaintiffs would be put to irreparable loss, hardship and inconvenience.

3. Per contra defendant No.1 filed objections to IA No. 20. Learned counsel for other defendants Sri. S.B.B. and Sri. V.F.G. adopted the objections filed by defendant No.1. In the objections it is contended that the issues No.1 to 4 framed by this court are correct and no need to amend. The proposition of law reported in 2011 SAR (Civil) 712 and AIR 2016 Chattisgarh 53 are not applicable to the facts of the case more so those decision will not laid down law for casting burden on defendant to prove documents when plaintiffs have alleged the said documents. It is settle principle of law that no decision or dictum/ ratio laid by the Supreme Court will not be against/inconsistent to the rule/Law

framed under act. The plaintiff filed the suit challenging the execution of gift deeds and sale deed. It is bounden duty of the plaintiff to prove the said fact. The court rightly framed issue No.1 to 4 casting burden on plaintiffs to prove the same and as such question of recasting of issues do not arise. Hence, prays to dismiss the application.

4. I have heard arguments on the both side and perused the record.

5. Now the points that arises for my consideration are ;

### **POINTS**

- 1) Whether the plaintiff made out that the recasting of issues necessary for determining the matter in controversy between the parties?
- 2) What Order?

6. My finding on the above points are;

Point No.1: In the negative

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

### **REASONS**

7. **Point No.1:-** The plaintiff has filed the suit to declare that the gift deed dated 20-09-2012, 02-10-2012, 27-12-2013 and

sale deed dated 31-05-2014 are illegal, forged, void and not binding on them and consequential relief of injunction.

8. When the case was posted for arguments on the side of defendants the plaintiffs filed instant application praying to recast issues by shifting burden on defendants. The plaintiff filed instant application by stating that as per dictum of Hon'ble Supreme Court 2011 SAR (Civil) 712 the plaintiffs not required to prove purported documents are bogus etc., but the defendant have to prove their documents are genuine. On perusal of record this court framed issues putting burden upon plaintiffs to prove execution of gift deeds and sale deed are illegal, forged and void and not binding on plaintiffs. Now, the plaintiffs contended that first the defendants have to prove the genuineness of documents.

9. The plaintiff relied upon decision reported in 2011 SAR (Civil) 712 in between Rangammal and Kuppaswami and another wherein at para 14 the Hon'ble Court held as follows :-

*“14. Section 101 of Indian Evidence Act, 1872 defines ‘burden of proof’ which clearly lays down that whosoever*

*desires any court to give judgment as to any legal right or law dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. Thus, the Evidence Act has clearly laid down that the burden of proving fact always lies upon the person who asserts. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party.”*

Further, Hon'ble Supreme Court at para No. 19 held that the party which makes allegations must prove it.

10. The plaintiff also relied upon decision reported in 2016 AIR Chattisgarh 53, wherein also Hon'ble High Court held that the burden of prove lies upon the person who asserts the fact.

11. The defendants relied upon decision reported in 2017 SAR (Civil) 1045, wherein the Hon'ble Supreme Court held that the initial burden is always on the plaintiff to prove his case.

12. On meticulous perusal of above reported judgments the Hon'ble Supreme Court held that the plaintiff who asserted should prove his case first and thereafter burden shift on the defendant. In the judgment reported Rangammal Vs. Kuppaswami Hon'ble Supreme Court held that it was the plaintiff who should have first of all discharge the burden that the sale deed executed during the minority of the appellant was genuine and was fitted to be relied upon. But case on hand the plaintiff contended that as per dictum of Hon'ble supreme court the defendants have to prove genuineness of the documents. On meticulous perusal of above reported judgment the Hon'ble Supreme Court not said defendants have to prove first but only the Honb'le Supreme Court held that the plaintiff asserted genuineness of the documents he has to prove his case first. So, case on hand the plaintiff asserted that gift deeds and sale deed are forged and vide document, than the burden always lies on the plaintiff to prove that the purported documents are forged and vide. This court has framed the issues in accordance with Sec. 101 of Indian evidence Act and as per the ratio laid down by the Hon'ble Supreme Court of India. The plaintiffs have not made out grounds to recast

issues by shifting burden on defendants by placing cogent reasons and materials. Hence I answered above point in negative.

13. **Point No.2**:- For the foregoing reasons, I proceed to pass the following:

ORDER

I.A.No.XX filed by the plaintiff U/o.14 Rule 5 of CPC is hereby dismissed with cost of Rs.200/-.

*(The above order dictated to Typist directly on computer, corrected by me and then pronounced in the open court on this the 9<sup>th</sup> day of January, 2018)*

Sd/-  
(D.Raghavendra)  
Senior Civil Judge, Bhatkal