

**IN THE COURT OF THE SENIOR CIVIL JUDGE, BHATKAL,
AT: BHATKAL.**

PRESENT : SRI. KURANI KANT DHAKU

B.Com.LLB. [Spl.]

SENIOR CIVIL JUDGE & JMFC,
BHATKAL.

ORIGINAL SUIT No. 9/2018

DATED THIS 31st DAY OF JANUARY-2024.

BETWEEN:

1.SRI. HEMANT ISHWAR NAIK AND OTHERS

----- **PLAINTIFFS.**

AND:

1. SRI. RAMA SOMAYYA NAIK AND OTHERS

-----**DEFENDANTS.**

PARTIES TO THE I A No.IX

BETWEEN:

1. SIR. PAVANKUMAR NAIK

----- **APPLICANT.**

[ORIGINAL DEFENDANT NO.2]

AND:

1. SRI. HEMANT ISHWAR NAIK AND OTHERS

----- **OPPONENTS.**

[ORIGINAL PLAINTIFFS]

ORDER ON I.A. No. IX.

The I A No.IX is under Order XVI Rule 1 and 2 r/w section 151 of CPC filed by applicant/defendant No.2 seeking relief to issue notice to the Bhatkal Agricultural and Rural Development Co-operative Bank Ltd., Bhatkal to produce the original Gift Deed No. 146/2010-11.

2. In the Memo of facts, it is stated that the very applicant/defendant No.2 has borrowed loan from the above said Bank by depositing the original gift deed. Now the applicant/defendant No.2 is required original gift deed to prove his case. But, the said gift deed is in the custody of bank and at present he is unable to repay the entire loan amount. Further, it is stated that the production of original gift deed is very much important to defendants to prove their case. Hence, prays to issue direction to the Bank to produce the original Gift Deed.

3. On the other hand, the plaintiffs/opponents have filed objections denying the entire facts of the memo and contended that the application filed by the applicant is not maintainable either in eyes of law nor under the facts. It is contended that there is no evidence to show that the applicant/defendant No.2 has deposited the gift deed in the above said bank. If the applicant/defendant No.2 has borrowed the loan by depositing the original gift deed then he must repay the loan amount to the bank and then he may produce

the gift deed to prove his defence. Hence, at this stage, law does not permit the applicant to pray such kind of relief. Hence, prays to dismiss the I.A. with cost.

4. Heard arguments both sides and perused materials.

5. On perusal of entire material records, the points would arise for consideration are:

P O I N T S:

POINT No.1: Whether the applicant/ defendant No.2 has made out sufficient grounds to allow his application Under Order XVI Rule 1 and 2 r/w section 151 of CPC?

POINT No.2: What order.?

6. On careful scrutiny of entire material records, my findings to the above points are:

F I N D I N G S:

POINT No.1: In the Affirmative.

POINT No.2: As per my final order for the following:

R E A S O N S:

7. POINT No.1: Admittedly, present suit is for the relief of partition and separate possession in respect of suit schedule

properties. Further, the plaintiffs have also sought relief of declaration that the gift deed executed in favour of defendant No.2/applicant is not binding upon the share of the plaintiffs.

8. In para No.6 of the plaint, it is specific contention of the plaintiffs that the suit schedule property in RS No. 680/2 was gifted in favour of defendant No.2 illegally and behind the back of the plaintiff even the plaintiff No.1 was minor. In para No.13 of the written statement of defendant No.2, the defendant No.2 has denied the facts stated by the plaintiffs and it is contended that the deceased Somayya Bin. Ira yane Bola was executed the gift deed in favour of defendant No.2 during his life time. Hence, the gift deed executed by the deceased is binding upon the share of the plaintiffs. So, on close reading of plaint as well as written statement, it is noticed that both parties are required to prove and disprove the gift deed. So, the production of original gift deed before the Court is very much necessary.

9. The Main contention of the plaintiffs/opponents is that the applicant/defendant No.2 must repay the loan amount to the bank and then he is liberty to bring it before the Court. It is admitted that the said original gift deed is in the custody of the bank and defendant No.2/applicant is bound to repay the loan to the bank. But, in the event of production of original gift deed, the bank has not lost any right to recover the loan from the applicant/defendant No.2. So if the original gift deed is produced before the Court, it is deemed to be the gift deed is in the custody of bank. Hence, considering all the above

facts and circumstances and for complete adjudication, I am of the considered view that production of original gift deed is very much necessary. Therefore, I answer point No.1 **in the Affirmative.**

10. POINT No.2.: As reasons discussed supra, I proceed to pass the following:

O R D E R:

The I A No.IX Under Order XVI Rule 1 and 2 r/w section 151 of CPC filed by the applicant/defendant No.2 is hereby ALLOWED.

Hence, issue notice to the Bhatkal Agricultural and Rural Development Co-operative Bank, Bhatkal Branch, Murdeshwar is directed to produce the original Gift Deed No. 146/2010-11 deposited by defendant No.2 in respect of loan No. 568/5/29. If PF paid.

[Dictated to the Stenographer directly on computer, typed by him, corrected by me and then pronounced in the Open Court on this 31st day of January -2024]

(Kurani Kant Dhaku)
Senior Civil Judge & JMFC,
Bhatkal

