

KAUK410011372017



IN THE COURT OF THE CIVIL JUDGE AT DANDELI

Present: Smt.ROHINI D BASAPUR, LLM

Civil Judge & JMFC, Dandeli.

ORIGINAL SUIT. No 214/2017

DATED THIS THE 12th DAY OF DECEMBER 2024

Plaintiff: Smt. Lalita Nayak W/o Ramachandra Nayak

-V/s-

Defendant: Shri Vishwanath S/o Laxman Kalthodkar

ORDERS ON APPLICATION FILED BY THE PLAINTIFF
UNDER ORDER XVI RULE 2 R/W SECTION 151 OF THE
CODE OF CIVIL PROCEDURE

The plaintiff has filed this application praying to issue summons to two witnesses **1. Shri S.G. Biradar**, Retired person, R/o: Maruti Nagar, Dandeli, **2. Shri R.D. Patil**, Retired person, R/o: K.P.C. Colony, Ambewadi, Dandeli who signed in the agreement of sale of the suit property dated 06-08-1989 as witnesses.

2. The plaintiff has initiated the current lawsuit seeking specific performance concerning the property in question. In the memorandum of facts, it is stated that the deceased

defendant, Vishwanath, son of Laxman Kalhodkar, entered into a sale agreement with the plaintiff on August 6, 1989, in Dandeli, for the sale of the property for a consideration of Rs. 37,000/-. A written sale agreement was executed between the plaintiff and the defendant, with witnesses including 1. Shri S.G. Biradar, a retired individual residing in Maruti Nagar, Dandeli, and 2. Shri R.D. Patil, a retired individual residing in K.P.C. Colony, Ambewadi, Dandeli. The agreement was drafted by Mr. G. N. Inamdar, who has passed away. Additionally, Mr. Gopalrao H. Balnal, another witness to the agreement, has left Dandeli, and his current whereabouts are unknown. The plaintiff's husband, along with the deceased defendant's wife and son, Smt. Uma Kaltodkar and Vinayak Kaltodkar, also served as witnesses to the agreement. The agreement was executed before Notary Public Mr. B.C. Toaranagatti of Haliyal, who has also passed away. The current suit is scheduled for today to conduct the cross-examination of the plaintiff. The plaintiff has submitted the aforementioned sale agreement as evidence in this case. The defendants, however, dispute the execution of the sale agreement between the plaintiff and the deceased defendant. The aforementioned witnesses, Shri S.G. Biradar and Shri R.D. Patil, are unwilling to testify unless they receive a court summons. The testimony of these witnesses is crucial for resolving the issues at hand in this case, and therefore, this application should be granted.

3. The defendants oppose the application in question, asserting that the plaintiff has submitted it based on a

fabricated memorandum of facts. Furthermore, the plaintiff has failed to provide an affidavit to substantiate his application.

4. Upon reviewing the pleadings, it is evident that the purported witnesses are affiliated with the plaintiff and are, in fact, private individuals. It is the plaintiff's responsibility to present these witnesses in court to provide evidence. If these individuals were government employees currently in service, the plaintiff's position might be somewhat defensible. However, in this instance, the plaintiff must independently produce his witnesses before this court.

5. The memorandum of facts accompanying the application does not establish any reasonable grounds. The alleged witnesses are local residents, and the plaintiff has not made adequate efforts to secure their presence before this Honorable Court. Therefore, the plaintiff cannot rely on this court to assist in bringing forth his witnesses.

6. Moreover, the plaintiff has prepared the contested document without the knowledge of the defendants, which has led to the witnesses' reluctance to testify in court. This document appears to be fabricated, and as such, the defendants cannot seek the court's assistance in compelling these witnesses to provide evidence in their favor. The witnesses themselves express uncertainty regarding the document presented by the plaintiff, which may explain their hesitation to appear before this Honorable Court.

7. If the present application is not allowed no hardship will

be caused to the plaintiff. The plaintiff has filed the present application only to delay the matter and to take the help of this Honorable Court for his further evidence, which is not permissible under law. Accordingly have sought for rejection of the application.

8. Having heard the learned Counsel for the parties the points that arise for my consideration are:

1. Whether the application filed U/o XVI Rule 2, R-w Sec151 of CPC by the plaintiff be allowed?
2. What order?

9. My answer to the above points are as follows:-

POINT No.1 :- In the Affirmative

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

REASONS

10. Point No.1: It is essential to recognize that a sale deed must be validated through the presence of the attesting witnesses. In the current application, the plaintiff is making efforts to bring forth these witnesses, who are unwilling to appear before this court. Consequently, the plaintiff is entitled to request this court to summon the aforementioned witnesses. Additionally, it has been noted that the other witnesses to the document are deceased. Therefore, I see no legal barrier to summoning the witnesses. Moreover, summoning these

witnesses will facilitate the revelation of the truth. It is essential to note here that memorandum of facts would be sufficient. As it is not mandate for the said provision under civil rules of practice. For the reasons stated above, I answer point No.1 in the affirmative.

11. POINT No. 2:- Therefore for the aforesaid reasons I pass the following:

ORDER

The application filed by the plaintiff U/o XVI Rule 2 of CPC is hereby allowed on cost of Rs. 200/-.

Issue summons to the witnesses mentioned in the application.

(Dictated to the stenographer directly on computer, typed by her, corrected by me and then pronounced in the open court on this the **12th day of December 2024**)