



IN THE COURT OF THE PRL CIVIL JUDGE & JMFC.,
AT HONNAVAR.

-: PRESENT :-

SRI. IRANNA HUNASHIKATTI

B.COM., LL.B.

Prl. Civil Judge & JMFC.,

Honnavar.

Dated this 14th day of July-2025.

OS No. 87/2019

Plaintiff/s : Rajeshwari D/o Keshav Naik & Others,
Aged about : 48 years,
Occupation: Agriculturist & housewife,
R/o Prabhatnagar, Honnavar,
Honnavar Taluk (U.K.).

V/s

Defendant/s : Smt. Vimala @ Geeta W/o Rama Naik,
Aged about : 69 years,
Occupation: Housewife,
R/o Prabhatnagar, Honnavar,
Honnavar Taluk (U.K.).

I.A. No. XII

Applicant/s : Smt. Rajani W/o Surendra Naik.

(By Sri. N.S.P., Advocate)

V/s

Opponent/s : Smt. Vimala @ Geeta W/o Rama Naik.

(By Sri G.V.B., Advocate)

ORDERS ON I.A. No XII.

The plaintiff's have filed this application U/o XXVI rule 10A R/w Sec 151 CPC & section 45 of Evidence Act, seeking an order for appointment of Commissioner for the purpose of scientific investigation and to submit the report.

2. The application is accompanied by an affidavit duly sworn to by the plaintiff No.3 wherein she has averred that, the defendant has created a forged will in order to grab the share of plaintiff's in suit schedule property & same was furnished before the court. However, the defendant has involved with the one person by name H .T. Naik & later on his signature was taken on the said will. Thereafter, the defendant has examined Hariyappa Timmappa Naik (H.T.Naik) as attesting witness of the said will & got marked will as Ex.D1. But, in the said Ex.D1 there is no proper details of the H.T.Naik & also the date, when he has signed to said will. However, there a date mentioned that when other two attesting witnesses are signed on the said will. Therefore, suspicious circumstances are available around the signature of the H. T. Naik(Hariyappa Timmappa Naik). Therefore, it is further stated that, it is just and necessary the appoint a Court Commissioner for the purpose of scientific investigation to find out the age of the signatures of attesting witnesses & age of the signatures of H.T.Naik & age of the signatures of scribe on

Ex.D1 and also find out the age of the Ex.D1's paper. **If the application is not allowed, then the plaintiff's will be put to irreparable loss. Therefore the plaintiff's are prayed to allow the application.**

3. The learned counsel for the defendant filed objection by denying averments of this application and further contended that the application filed by the plaintiffs is not maintainable under law or facts. Further contended that, the plaintiffs have already filed similar application i.e IA No. 9 & same was dismissed by this Hon'ble court. Later on plaintiffs have filed writ petition No. 106106/2023 before the Hon'ble High Court by challenging the order of trial court on IA No.9. After hearing, the Hon'ble High Court has allowed the writ petition & instructed the trial court to send Ex.D1 for scientific investigation. Thereafter, as per the order of Hon'ble High court this court has sent Ex.D1 for scientific investigation. However, forensic department has submitted a report by mentioning that there are no scientific techniques are available to find out the age of the ink on Ex.D1. Further contended that, the plaintiffs have again filed this application by seeking similar relief's as prayed in IA No.9 in a alternative manner. Further contended that, the plaintiffs have filed this application only in order to dragon the matter. Hence, prays to dismiss the application.

4. Heard both side counsels on I.A. No 12.

5. The following points would arise for consideration:-

1. Whether the application filed by applicant under order 26 Rule 10A R/w section 151 of C.P.C & section 45 of Evidence Act is deserved to be allowed?

2. What order?

6. Based on the contents of the present application and objection raised by the plaintiff and also materials on hand, the aforementioned points are answered as under:-

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

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

:-REASONS:-

7. **Point No.1** :- I have gone through the application and records of the case. The record discloses that the present suit is filed by the plaintiffs seeking relief of declaration & partition and separate possession in respect of the suit property.

It is the case of the plaintiffs that, they and defendant are the members of Hindu Joint family and are governed by Hindu Mitakshara Law of Inheritance and Succession. The suit schedule properties are the joint family properties of the plaintiffs & defendant. It is the contention of the plaintiffs that, they are also having equal share in the suit schedule properties as the co-prceners. So, they requested the defendant to make the

partition of the suit schedule properties. But, she has not given any share to the plaintiffs.

8. Now it is the contention of the defendant is that the, late Tarabayi W/o Hanumanth Naik (who is her mother) executed a will in her favour in respect of eastern portion extent 0-22-00 of suit schedule property & also house bearing No. 993 & 993A. Therefore, the plaintiff's have no right over the above said extent of suit schedule properties & also in said house properties. Further stated that, the plaintiffs are having a right to the extent of 0-11-0 over the western side of suit schedule property.

9. The learned counsel for the plaintiff's argued that, the defendant has created a forged will in order to grab the share of plaintiff's in suit schedule property & same was furnished before the court. However, the defendant has examined Hariyappa Timmappa Naik (H.T.Naik) as attesting witness of the said will & got marked will as Ex.D1. But, in the said Ex.D1 there is no proper details of the H.T.Naik & also the date, when he has signed to said will. Therefore, he prays to allow the present application & to appoint a Court Commissioner for the purpose of scientific investigation in order to find the age of the ink of the signatures of attesting witnesses & age of the ink of the signature of H. T. Naik & also age of the Ex.D1's paper.

10. The learned counsel for the defendant argued that,

defendant has filed written statement & claimed a counter claim. In spite of this, the plaintiffs have not at all denied the contents of the counter claim by filing a rejoinder. Further argued that, forensic department has already stated that, there is no scientific techniques are available to find the age of the ink of the signatures. Further argued that, in this application also plaintiffs have seeking to find the age of the ink of the signatures of attesting witnesses & age of the ink of the signature of H. T. Naik & also claimed age of the Ex.D1's paper. Therefore, he prays to dismiss the present application by imposing huge costs.

11. The due execution of the document can be proved by examining the attesting witnesses to the Ex.D1.

However, the learned counsel for the plaintiffs further argued that, if the application is allowed and the Will in question is sent for examination for a limited purpose, the rights of the defendant will not be affected. Further argued that, opinion of the expert about the will (i.e Ex.D1) help the trial Court in order to decide the matter finally & effectively.

12. The learned counsel for the defendant argued that there is no merit in the application filed by the plaintiffs. The plaintiffs have not denied the signatures of the testator or the other two attesting witnesses. Two attesting witnesses have already died. The third attesting witness is examined as DW1 & he

was fully cross examined. During cross examination, nothing has been elicited from him to disbelieve his version. Since the plaintiffs have not led any evidence, the defendant sought the permission from the trial Court to permit him to examine the third attesting witness to the Will in question. The Trial Court permitted the plaintiffs to examine the attesting witness as he was aged and two other attesting witnesses have already died. Accordingly, he was examined as DW1. The Will in question is marked as Ex.D1. It is stated that DW1 is fully cross-examined. Thereafter, plaintiffs filed the application IA No. 9 under Order 26, Rule 10 A read with Section 151 of CPC and Section 45 of the Indian Evidence Act, only for the purpose of finding out the age of the ink of the signature of Hariyappa Thimmappa Naik (H. T. Naik), who is examined as DW-1, by comparing the same with the ink in the signatures of two other attesting witnesses found in the Will. The said application was dismissed by the trial Court.

13. The plaintiffs have disputed the signatures on the will at Ex.D1 and Ex.D1 is a concocted document.

14. The plaintiffs cannot seek for appointment of Court Commissioner merely because the signatures have been disputed by them. This Court can appoint Court Commissioner for scientific investigation when the evidence adduced by the parties is not sufficient or is ambiguous in nature. In this case plaintiff's have

not led evidence. However, the plaintiffs have already filed similar application as IA No. IX and same was dismissed. Thereafter, as per the order of Hon'ble High court this court has sent Ex.D1 for scientific investigation. But forensic department has already stated that there is no scientific techniques are available to find the age of the ink of the signature of the parties. Moreover, the evidence given by the expert is just an opinion evidence and it is not a conclusive proof which can be used only for corroboration purpose. This court has carefully perused the materials available on record. From going through above discussion, circumstances and materials on the hand, this court is of the opinion that, the application filed by the plaintiffs is deserved to be dismissed. Hence, the point No.1 is answered in the **Negative**.

15. Point No. 2 :- For the reasons discussed above, proceed to pass the following:

ORDER

The IA No. XII filed by the applicant U/o 26 rule 10A R/w 151 of C.P.C., & section 45 of Evidence Act is hereby dismissed with costs.

(Typed by me in my laptop, revised, corrected and then pronounced by me in the open Court, on this the **14th day of July, 2025.**)

SD/-
(IRANNA HUNASHIKATTI)
Prl. Civil Judge & JMFC.,
Honnavar.
