

ORDERS ON I.A.NO.IV

The counsel for the defendant has filed this application to issue direction to the plaintiff to produce the original consent agreement deed (ರಾಜ ಪತ್ರ) which is in the custody of plaintiff.

2. In the accompanying affidavit it is mentioned that, they have returned from Maskat in the year 2018 and started to reside in the Mundgod permanently by revoking the power of attorney executed in favor of plaintiff with respect to suit schedule property and landed property measuring 4 Acres and house properties standing in their names. And started to cultivate them by their own. Hence to take revenge plaintiff has started to trouble them unnecessarily. Hence, they have executed consent agreement deed (ರಾಜಿ ಪತ್ರ) on 14-01-2019 in the office of his advocate in duplicate, but the plaintiff has not acted according to said consent agreement deed. But wrongfully interfered in the suit schedule property and destroyed the pipe line and other irrigation instruments worth of Rupees lakhs together only with an intention to grab the properties by creating false stories about investments and developments of the suit schedule property and other properties and issued legal notice on 23-01-2019, they have replied on 01-02-2019. For that, she has filed OS No. 24/2019 against him which is pending for disposal. The plaintiff was in cultivation of the suit schedule property and other land properties on the basis of power of attorney executed by her. The plaintiff has produced xerox copy of consent agreement deed dated 14-01-2019, its original copy is with him.

There is a recital in it as the said consent agreement deed is in two sets (duplicate). The same is necessary to produce before the court for final adjudication of the matter. Hence she prayed to allow the application.

3. On the other hand, Sri.RNH Adv. for plaintiff orally objected.

4. Heard both side and perused the application and other available records.

5. The following points arise for my consideration;

Point No.1 : Whether the defendants have made out grounds to allow the application to call the document as prayed for?

Point No.2 : What Order?

6. My answer to the point No.1 is in the **Negative** for the following;

REASONS

7. Point No.1 : This is the suit filed by the plaintiff for Permanent Injunction against defendants. On the other hand the defendant No.2 has filed his written statement and the same is adopted by defendant No.1 by filing separate memo. Based on the same issues were framed and matter is posted for further cross

examination of PW1. Meanwhile the defendants come up with the instant application to issue direction to the plaintiff to produce the original copy of consent agreement deed for proper and final adjudication of the case.

8. It is pertinent to note here that, after careful perusal of xerox copy of the said consent agreement deed produced by the plaintiff along with list of documents, wherein condition No.1 with respect to house properties, the R.A.No. left blank i.e., "..... ಈ ಷರತ್ತು ಶಿರಸಿ 1 ನೇ ಎ ಡಿ ಜಿ ನ್ಯಾಯಾಲಯದಲ್ಲಿರುವ ಆರ್ ಎ ನಂ: / ರಲ್ಲಿ ಆಗುವ ಅಂತಿಮ ತೀರ್ಮಾನಕ್ಕೆ ಬದ್ಧವಾಗಿರುತ್ತದೆ ಎಂತಾ ಉಭಯತರರು ಸ್ವಇಚ್ಛೆಯಿಂದ ಒಪ್ಪಿರುತ್ತಾರೆ". Further, in condition No.1 with respect to landed properties the Sy.No. left blank ie., "..... ಇವರ ಮಾಲೀಕತ್ವದಲ್ಲಿರುವ ಮುಂಡಗೋಡ ಗ್ರಾಮ ಸ. ನಂ: ರಲ್ಲಿಯ 9-2-0 ಜಮೀನನ್ನು". Such being so, the said incomplete document is not valid in the eyes of law. Based on the same neither the plaintiff nor the defendants of the instant suit can't run the litigation. Further, this court gone through **131 of Indian Evidence Act** which reads as under :-

"Section 131 : Production of documents or electronic records which another person, having possession, could refuse to produce:- No one shall be compelled to produce documents in his possession or electronic records under his control, which any other

person would be entitled to refuse to produce if they were in his possession or control, unless such last mentioned person consents to their production”.

Hence in view of the reasons and provision discussed supra in the instant case the defendants can't compel the plaintiff to produce the said consent agreement deed, even though it is in duplicate copy. However, it is burden on the plaintiff to prove the legality of said consent agreement deed. And this court has ample power to take judicial note of the same during the final adjudication of the matter/passing the judgment. Hence, I answer point No.1 in the **Negative**.

9. Point No.2 : In view of answering point No.1 in the Negative, I proceed to pass the following;

ORDER

**The I.A.IV filed by the defendant
Under Order XII Rule 8 of CPC is hereby
rejected.**

No order as to costs.

For further cross examination of PW1.

Call on 23.04.2024.

-Sd/-

Civil Judge and
J.M.F.C. Mundgod.