

Order on I.A.No.XXXVIII dated 24.11.2021 filed under Order XIII Rule 10 and Order XVI Rule 1(3) of the C.P.C. r/w Rule 80 of the Karnataka Civil Rules of Practice, 1967 filed by the applicant / defendant

It is the prayer in the application to issue summons to the learned Member Secretary / Tahsildar, the Land Tribunal, Taluk Office, Udupi to produce the original documents/records filed/available in proceedings No.LRY No.78-288-TRI-769/78-79 on the file of the Land Tribunal, Udupi.

- 1) Application dated 19.12.1974 (Form no.7) submitted by Baiku Poojary.
- 2) All the Chalageni Chits/edurnudis executed by Baiku Poojary.
- 3) Deposition/Statement of Baiku Poojary.

2. It is supported by affidavit of defendant Jaya Poojary, S/o. Late Baiku Poojary therein he has stated that in his written statement taken defence that the defendant is the testamentary heir in respect of the plaint 'A' schedule properties (except item No.12) by virtue of Ex.D13 registered Will executed by his father Baiku Poojary in his favour. The burden of proving that such a Will has been executed by him has been casted on him in the suit. He further stated that the plaintiffs have during the course of the trial, denied the Left Thumb Impressions of the testator Baiku Poojary contained in Ex.D13. In order to prove that Baiku Poojary has

affixed his that thumb marks to the aforesaid Will, it is necessary to place before the Court and prove his left thumb marks. The documents sought to be summoned are undisputed records and they contain the left thumb marks of Baiku Poojary. Hence it is just and necessary to grant the prayer made in the accompanying application in order to disprove the contentions of the plaintiffs and to enable this Court to effectually adjudicate upon the disputes involved in the above suit. The records/documents described in the accompanying application are therefore absolutely relevant and material documents in the/for the purpose of this suit. Further he contended that the witness in question was not named in the Additional List and List of Witnesses filed in this suit earlier as the plaintiffs had not clearly denied the signatures of Baiku Poojary in their pleadings and have only improved their case during the course of trial. In any case it is absolutely necessary to call for/summon the documents in question for the foregoing reasons. Further he contended that the production of the certified copies of the documents described in the accompanying application will not meet the purpose as the production of originals is absolutely necessary in order to admit the documents in question and the thumb marks of Baiku Poojary in the evidence. In view of the reason, the instant application is filed, therefore, if it is not allowed the defendant will be put to great hardship and loss. Accordingly, sought for allow the application.

3. It is opposed by the plaintiffs on the ground that the application filed by the defendant for summoning of the original

documents from the Member Secretary / Tahsildar of the Land Tribunal, Udupi is absolutely false, ill-motivated, vexatious and not maintainable. The application is filed only for the purpose of misleading the Court and to drag on the case and thereby harass the plaintiffs. No purpose will be served by summoning the originals documents as sought in the application. The plaintiffs as denied earlier, now also deny the validity, genuineness and due execution and registration of the alleged Will of Baiku Poojary, as the said Will is apparently false and suspicious. The defendant has made hectic efforts in the above suit to prove the alleged Will but was miserably failed in all his attempts. The present application is a desperate attempt of the defendant, being well aware that the same will not help him in any way in reaching his destination.

4. It is further contended by the plaintiffs that the defendant has already produced and marked several documents containing the thumb impressions of Baiku Poojary and those documents are in the record of the case file. By the version of the defendant in the affidavit it can be inferred that the defendant himself is under doubt regarding the Thumb impression contained in the Will Ex.D13. The documents sought for production in the application at any cost will not rule out the suspicious circumstances surrounding the alleged Ex.D13. Those documents are not at all relevant and necessary for any purpose. The defendant purposely avoided entering into the witness box, but filing application after application to prolong the case. It is further contended by the plaintiffs that the affidavit sworn to by the

defendant is false and is contradictory to the prayer made in the application. The witness summoned can only produce the documents but he cannot adduce evidence as the application is silent about it. The defendant cannot blame the plaintiffs for his fault and lapse in prosecuting the case in due diligence.

5. It is further contended by the plaintiffs that some of the plaint properties are still pending adjudication before Land Tribunal as per the Order of the Hon'ble High Court of Karnataka in Writ Petition No.31450/2003 and also Writ Petition No. 33136/2003. Now the applicant seeking to summon documents from Land Tribunal case No. LRY 78-288-TRI 769/1978-79 which is clubbed with another case is under trial at present and if the documents sought for are summoned, then the entire case before the Land Tribunal will be stopped, resulting violation of the Order in the aforesaid writ petitions and result in further delay in finalizing the Land Tribunal case. Therefore, the plaintiffs are seeking dismissal of the application with costs.

6. Both side have submitted their notes of argument. The plaintiffs in support of their notes of argument also furnished copy of memo dated 13.09.2013, copy of the tax paid receipts, copy of the Ex.D12, copy of the order in Writ Petition No.31450/2003, accordingly having heard both side, the following points that would arise for consideration :

1. *Whether the applicant / defendant has made out grounds to summon the witness Member Secretary / Tahsildar, Land*

Tribunal, Taluk Office, Udupi and to produce the documents as above mentioned by the witness is to be allowed?

2. *What order?*

7. My findings on the above points are as follows:

Point No.1: In the negative;

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

REASONS

Point No.1:

8. On going through the application, affidavit sworn to by the defendant, notes of argument submitted by them and the objection statement to the instant application and notes of argument filed by the plaintiffs and also copies furnished in support of their notes of argument, it is the contention of the defendant Jaya Poojary that in order to prove the admitted signatures of late Baiku Poojary in support of the Will which is executed by Baiku Poojary in whose favour the original documents which are available in the Land Tribunal case as above mentioned, the form No.7, chalageni chit and deposition statement of Baiku Poojary are relevant to the case. Therefore, it is just and necessary to summon the learned Member Secretary / Tahsildar, Land Tribunal, Taluk Office, Udupi and produced notes of argument and they have also furnished copy of Writ Petition No.31450/2003 (LR) C/W. W.P.Nos.31757/2003 and 42763/2003 (LR) dated 05.06.2008 i.e. in between the family members of late Baiku Poojary therein it can be seen in page No.9 that ***“the impugned order passed by the respondent Land Tribunal, Udupi Taluk are hereby set aside. The matter stands***

remitted back to the second respondent to dispose of all these three matters and pass order after affording reasonable opportunity to all the parties to the Writ Petitions and decide the same strictly in accordance with the provisions of the Land Reforms Rules and Section 34 of the Land Revenue Act and further directed to permit the petitioners to adduce evidence under the Land Reforms Rules and also directed to call for the records 2 the same if any after receipt of and pass appropriate order and dispose of the expeditiously”.

9. Further the learned counsel for the plaintiffs also furnished copies of the orders in W.P.No.33136/2003 (LR) dated 06.12.2006 therein also it can be seen in para 2 that ***“that apart the order of the Land Tribunal does not discuss the evidence add:ced by the petitioners. The order of the Land Tribunal is vague and passed without jurisdiction. The writ petition is allowed and the impugned order is set aside. The matter is remanded to the appropriate Land Tribunal for fresh disposal in accordance with law”.***

10. As rightly pointed out by the learned counsel for the plaintiffs, there is a direction to the learned Land Tribunal for dismissal of the matter as early as possible. In view of the reason it cannot be denied that the documents are now seeking to be summoned are also material and relevant documents in the said case pending before the Land Tribunal, therefore if those documents are summoned, indeed it would cause delay in disposing of the matter pending before the Land Tribunal. Therefore, I am of

the considered opinion that if the documents proposed to be summoned by the applicant / defendant Jaya Poojary, S/o. Late Baiku Poojary would nothing but causing delay in disposal of the matter pending before the learned Land Tribunal. In view of the reason I found no justifiable reason made out by the applicant / defendant to allow the application. In view of the reason, the instant application deserves to be dismissed. Accordingly, without any hesitation I answer ***point No.1 in the negative.***

Point No.2:

11. For the forgoing reasons, I proceed to pass the following :

ORDER

I.A.No.XXXVIII filed by the applicant / defendant Jaya Poojary, S/o. Late Baiku Poojary under Order XIII Rule 10 and Order XVI Rule 1(3) of C.P.C. r/w Rule 80 of the Karnataka Civil Rules of Practice, 1967 is hereby dismissed. No order as to costs.

(Natesha R.)

Addl. Senior Civil Judge & A.C.J.M.,
Udupi .