

ORDERS ON I.A. No.III

This is an application filed by the plaintiffs under Order XVI, Rule 6 r/w. Sections 94(e) and 151 of CPC praying to summon the documents from the custody of (i)Medical Director, Lombard Memorial Hospital, Udupi (ii)Medical Superintendent, Kasturba hospital,Manipal (iii)Medical Director, Hitech Medicare Hospital,Ambalapady, Udupi in respect of deceased A. Vishwanath Sanil.

2. In the affidavit annexed to the I.A., the plaintiff no.1 has assured that the father of the plaintiffs by name A.Vishwanath Sanil had taken treatment as an inpatient at Lombard Memorial Hospital of Udupi, KMC hospital of Manipal and Hitech Medicare hospital of Udupi. It is alleged that by taking undue advantage of the physical ailments and resulting depression of their father, the defendant no.2 had got executed Settlement Deed dated 28-09-2023, which is registered on 02-12-2023. The documents sought to be summoned are required to prove the health condition of their father and it is apprehended that if the documents are not secured and seized by this Court, there is every chance of inter-meddling with the documents by the defendants or it may be destroyed over a period of time. Hence, it is prayed to allow the application.

3. Per contra the learned counsel for defendants has filed his counter statement to the said I.A. by contending that the application is premature and devoid of merits. It is denied that the defendant no.2 by taking undue advantage of the illness of his father had got executed the Settlement Deed. The documents sought for is not at all material and as such it is prayed to dismiss the application with costs.

4. Heard both sides.

5. The following points would arise for my consideration:

Whether the documents sought for is required to be summoned at present?

6. My findings on the aforesaid points is in the **Affirmative** for the following:

REASONS

7. This is a suit for declaration to declare that the settlement deed dated 28-09-2023 executed by A.Vishwanth Sanil in favour of defendant no.2 is null and void. Further it is prayed to grant decree for partition in respect of plaint 'A' and 'B' schedule properties. After appearance of the defendants they have filed memo of undertaking stating that they will not alienate or encumber or create third party interest in respect of the suit schedule properties until filing of the written statement. The said undertaking is received on record and at this point of time the learned counsel for plaintiffs insisted

for taking up the present I.A. no.III. It is apprehended that if the documents sought for under I.A. no.III is not summoned and secured, there is every chance of inter-meddling by the defendants or by efflux of time the said documents may be destroyed by the hospital authorities.

8. There is no bar to exercise powers under Order XVI Rule 6 of CPC even prior to the commencement of the trial. No doubt the chances of inter-meddling with the hospital records is very remote, but the allegations made on an affidavit cannot be lightly brushed aside. No hardship will be caused to the defendants if the said medical records are summoned. On the other hand, if there happens any inter-meddling as averred by the plaintiffs, they would suffer irreparable hardship. In the circumstance it is necessary to secure the documents mentioned in the I.A. Accordingly, above point is answered in the Affirmative and this Court deems fit to pass the following:

ORDER

I.A. No.III filed by the plaintiffs under Order XVI, Rule 6 r/w. Sections 94(e) and 151 of CPC Is hereby allowed.

The documents mentioned in I.A. no.III are to be summoned from the custodian of the said document, if P.F. paid returnable by 03-04-2024.

(Vignesh Kumar)

Prl. Sr. Civil Judge and CJM., **Udupi.**

