

ORDER ON I.A.No. XXVIII

This is an application filed by the counsel for the defendant No.1 under Order XVI Rule 1 and 6 R/w Section 151 of CPC seeking direction upon the plaintiff to produce the alleged original GPA executed by the defendants No.1 and 2 and alleged sale deed dated 28-11-2003 executed by GPA holder of T.R.Venkataramana Hatwar and Smt. Savithramma.

2. In the affidavit the defendant No.3 has stated that no such sale deed and agreement to sell for executed in respect of the suit properties as stated in the plaint. It is necessary to directing plaintiff to produce those documents.

3. The counsel for the plaintiff filed objection to the application by stating that the same is not maintainable under law. The application is filed to drag the matter. The GPA executed by the defendants No.1 and 2 were earlier in possession of T.R. Venkataramana Hatwar, who is the father of the defendants. After his death the defendants must have obtained the possession of the same. The defendants

are deliberately avoiding to produce the same. Hence, prayed to dismiss the application.

4. Heard both sides.

5. The following points arise for my consideration:

1) Whether the defendant No. 1 has made out grounds to allow the application?

2) What order?

6. My answers to the above points are as under:

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

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

R E A S O N S:

7. **Point No.1** : The defendant No.1 has sought for direction upon the plaintiff to produce the GPA executed by defendants No.1 and 2 in favour of their father and also the alleged sale deed dated 28-

11-2003. It is to be noted that the sale deed dated 28-11-2003 is already produced and marked as Ex P11. In view of this the present application as to the said aspect becomes infructuous. Now, the defendant No.1 has also contended that the alleged GPA executed by him and the defendant No.2 in favour of their father is in possession of the plaintiff. In the objection the plaintiff has clearly denied the same. It is to be noted that the GPA was executed by defendants No.1 and 2 in favour of their father Venkataramana Hatwar. The learned counsel for the plaintiff has argued that the said Venkataramana was the custodian of the GPA and it was in his possession and after his death the defendants No.1 and 2 must have obtained the possession of the same. The arguments canvassed by plaintiff side sounds reasonable. When, the plaintiff has clearly denied that the GPA is not in his possession and the circumstances suggest that the father of the defendants No.1 and 2 was the custodian of the documents and after his death his legal heirs must have been in possession of the same, the question of directing the plaintiff to produce those documents does not arise. Hence, I answer point No.1 in the **Negative**.

8. Point No.2: In view of above discussions, I proceed to pass the following:

ORDER

I.A. No.XXVIII filed under Order XVI Rule 1 and 6 R/w Section 151 of CPC is hereby rejected with costs of Rs.100/-.

For further evidence of plaintiff side if any as last and final chance by 05-11-2019.

**Prl. Civil Judge & JMFC,
Kundapura.**