

**IN THE COURT OF PRL. CIVIL JUDGE &
J.M.F.C. AT BELTHANGADY.**

Present:-

Sri. Sandesha.K.,MA.LLB.
Prl. Civil Judge & J.M.F.C., Belthangady)

Dated: 6th Day of January, 2024

ORIGINAL SUIT NO. 115/2018

Plaintiff:

Hariprasad,
S/o B.K Subramanya Sampigethaya,
Aged about 29 years,
R/at Saraswathi Kripa House,
Near Rama Mandir, Maddadka,
Kuvettu Village & Post,
Belthangady Taluk.

(By: Sri. Y.R.K., Adv.)

-:V/S:-

Defendants:

1. Sri. Ramadas Pai,
Aged about 67 years,
R/at 296, Manjunatha Kripa,
Belthangady Taluk. D.K
2. Smt. Usha Pai @ M. Radha Nayak,
Aged about 64 years,
R/at 6-231, Amaravathi, 15th cross,
Near Kenneth George School,
Bhuvaneshwari Nagar,
Dasarahalli, Bangaluru.
3. Sri. B. Devadas Pai,
Aged about 63 years,
Saikripa Complex, Shashigar,
Samayale Ro, House No.14, Hill view,
C.H. Meera Road, Thane- Maharashtra,
4. Sri. B. Haridas Pai,
(Since deceased)
- 4(a) Smt. Jyothi, aged about 54 years,
W/o Late Haridas Pai,
- 4(b) Mukesh, aged about 26 years,
S/o Haridas Pai,
- 4(c) Rithesh, aged about 31 years,
S/o Haridas Pai,

all are R/at No.110, near Post office,
Laila Village, Laila Post,
Belthangady Taluk. D.K

5. Smt. Kalpana Pai @ Kalpana M.Bhat,
Aged about 60 years,
R/at No.15-51, Tapovan,
Kempugudde, Manampady,
Mulki, Mangaluru.

6. Sri. B. Gokuldas Pai,
(Since deceased)

6(a)Smt. Prabha G. Pai aged about 48 years,
W/o Gokuldas Pai,

6(b)Ku. Sujatha, aged about 20 years,
D/o Gokuldas Pai,

6(c) Hemanth Pai, aged about 19 years,
S/o Gokuldas Pai,

6(d) Anantha Pai, aged about 14 years,
S/o Gokuldas Pai,

7. Smt. S. Sadhana Pai @ Nandini G.Kamath,
Aged about 56 years,
R/at 103, Radhakrishna
Co-operative Hsg. Society Tank Road,
Near Shankar Temple,
Khandiwali Village, Khandiwali
Mumbi-400067, Maharashtra,

(Rep. By: Sri. A.N.,Adv.for D1 to 5, 7)

1.	Provision under which application filed.	Under order 16 rule 2 and 3 and section 151 of CPC
2.	Relief sought	Pray for issues summons witness
3.	The date on which application filed.	26.06.2023
4.	Number of application	IA No.VII
5.	The date of which the objection filed by the respondent /defendant	26.07.2023
6.	The date on which the order	06.01.2024

www.ecourtsindia.com	were passed on the said application	
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**ORDERS ON IA NO.VII FILED BY THE PLAINTIFF
UNDER ORDER 16 RULE 1 AND 2 AND SECTION 151
OF CPC.**

The plaintiff has filed I.A.No.VII U/o 16 Rule 1 and 2 and Section 151 of C.P.C., at this stage of further evidence of plaintiff pray for issues summons witness as mentioned in the IA No.VII.

2. In the memorandum of filed in support of I.A.No.VII the plaintiff counsel stated that, the above case is posted for further evidence. As the person sought to be called for give evidence is an senior advocate notary public Sri. Bhagiratha G who notarized the one Land Tribunal order. Hence in order to prove the case of the plaintiff it is necessary to summon the witness for giving evidence in the interested justice.

3. On receipt of application the counsel for the defendant has filed objection to IA and stated that, the application filed by the plaintiff is not maintainable either in law or in fact. The plaintiff sought to introduce an inadmissible documents and evidence. The evidence of notary public has no relevancy to any of the issues involved in the suit and no purpose be served by examined in the proposed witness. Hence pray for dismiss the suit.

4. Head the IA No.VII of learned counsel for the both parties and perused the material on record.

5. For disposal I.A.No.VII following points arise for court consideration:

1. Whether the plaintiff has made out sufficient grounds to permission to adduce further evidence of witnesses by allowing IA No.VII?.

2. What Order?

6. Court findings to the above points are as under.

Point No.1 : In the Negative.

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

REASONS

7. Point No.1:- The plaintiff has filed present suit against the defendants for the relief of declaration, consequential relief of possession and mesne of profit. After the institution of suit as contemplated under law, suit summons to came to be issued to the defendants. In pursuance of suit summons defendants appeared before the court through his counsel, but dispute of sufficient opportunity. Defendants have not filed written statement. Hence written statement of defendants have not filed and case is posted for plaintiff evidence. After the completion of plaintiff evidence and when case is fixed for further evidence on behalf of plaintiff, the Ld counsel for the plaintiff has filed present application pray for issue summons witness as mentioned in the IA No.VII.

8. The learned counsel for the plaintiff argued before this court, the witness mentioned in the IA no.VII is an senior advocate notary public who notarized the Land Tribunal Order. In order to prove the case of the plaintiff said

witness is very much necessary for giving evidence on behalf of plaintiff. Hence pray for allow the application.

9. The object of sub Rule (2) of Rule (1) of order 16 of CPC is that a party desirous of obtaining any summons from the attends of any person shall file in court an application stating there in the purpose for which the witnesses is proposed to be summonsed. The object disclosing such a purpose is to enable the court to decide as to whether the examination of such witnesses is of a material benefit to decide the dispute. A duty is therefore to cost on the court consider whether the purpose of siting party as a witnesses speak of any material of fact.

10. In the present case on hand the plaintiff has filed present application to received the list of witnesses and adduce the evidence of witnesses which are not relevant to the present case. Moreover the witness examine as cited in the application is who notarized the Land Tribunal Order. The above said Land Tribunal order has not marked in the present suit. Hence the witness who notarized the land tribunal order is not relevant to the present case. When plaintiff is not produced the notarized copy of land tribunal order the question of examine in the witness does not arise. It is settle principle of law that, notarized copy of cannot be marked. If the plaintiff has produced order of Land Tribunal, the person who notarized the Land Tribunal Order is not relevant to examine.

11. Have a heard the arguments on behalf of the both parties and carefully perused the record. It is settle

position of law that witnesses evidences require to the summoned should be relevant for just and fair adjudication of case. In the present case on hand the witness cited in the IA No.VII is not relevant to examine and he is not the authorized person to depose before this court with regard to land Tribunal order. Accordingly in the above said discussion, this court answered point No.1 in the **Negative.**

12. Point No.2: In the result, this court proceed to pass the following:

ORDER

I.A.VII filed by the plaintiff and under 16 rule 1 and 2 and section 151 of CPC is here by rejected.

No order as to cost.

(Dictated to the stenographer, transcribed by him corrected and signed by me and then pronounced in the Open Court on this 6th day of January 2024)

(Sandesha K.)
Prl. Civil Judge & JMFC.,
Belthangady.