

Balekai Lingappa S/O B Hanumaiah vs G Anwar S/O G Khaja Hussain Sab on 25 January, 2025

Author: Suraj Govindaraj

Bench: Suraj Govindaraj

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NC: 2025:KHC-D:1
WP No. 104810 of 20

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH
DATED THIS THE 25TH DAY OF JANUARY, 2025
BEFORE
THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ
WRIT PETITION NO. 104810 OF 2023 (GM-CPC)

BETWEEN:

BALEKAI LINGAPPA S/O. B. HANUMAIAH,
AGE: 59 YEARS, OCC: AGRICULTURE,
R/O. BANADAKERI, 16TH WARD,
KAMALAPUR HOSAPETE,
DIST: VIJAYANAGAR-583221.

(BY SRI. S.S. BETURMATH, ADVOCATE)

AND:

G. ANWAR S/O. G. KHAJA HUSSAIN SAB,
AGE: 49 YEARS, OCC: AGRICULTURIST,
R/O. DOOR NO.241, 11TH WARD,
NEAR OLD BUS STAND, KAMALAPUR,
HOSAPETE, DIST: VIJAYANAGAR-583221.

...PETIT

...RESPON

Digitally
signed by
GIRIJA A

(BY SRI. D.L. LADKHAN, ADVOCATE)

BYAHATTI
Location:
GIRIJA A High Court
BYAHATTI of Karnataka,
Dharwad
Bench
Date:
2025.01.27

16:22:06

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE

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CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI TO QUASH THE IMPUGNED ORDER DATED 03/06/2023 PASSED BY PRL. SENIOR CIVIL JUDGE & HOSAPETE, IN O.S. NO.82/2018 ON I.A. NO.9 VIDE ANNEXURE-G AND ALLOW I.A.NO.9 IN ITS ENTIRETY IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

THIS PETITION COMING ON FOR ORDERS THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

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WP No. 104810 of 2023

ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ)

1. The petitioner is before this Court seeking for the following reliefs:

1. Issue a Writ in the nature of Certiorari to quash the impugned order dated 03/06/2023 passed by Prl. Senior Civil Judge & JMFC Hosapete, in O.S. No.82/2018 on I.A. No.9 vide Annexure-G and allow I.A.No.9 in its entirety in the interest of justice and equity.

2. Any other reliefs this Hon'ble Court deems fit for the facts and circumstances may please be granted.

2. The brief facts of the case are;

2.1. The respondent filed a suit for specific performance in O.S.No.82/2018 before the Principal Senior Civil Judge at Hosapete. 2.2. Written statement having been filed, in the written statement, the petitioner herein, who was defendant therein, had contended that there was no sale transaction, but it was a loan transaction.

NC: 2025:KHC-D:1450 2.3. It is further contended that a consent agreement styled as 'Oppige Patra' had been executed between the parties on 24.03.2017. This document was confronted to PW1. 2.4. In the cross-examination on 09.08.2021, though PW1 admitted the signature, the said document could not be marked since what was confronted was a photocopy.

2.5. As the petitioner filed an application under Order XI Rule 14 of the Code of Civil Procedure, calling upon the plaintiff to produce certain documents including the aforesaid consent agreement dated 24.03.2017, the same came to be objected to by the plaintiff contending that the plaintiff is not

in possession of the original of the agreement dated 24.03.2017.

2.6. The Trial Court vide the impugned order dated 03.06.2013, partly allowed the application by directing production of all the other documents NC: 2025:KHC-D:1450 sought for in the application under Order XI Rule 14 of CPC, except the Masalu agreement dated 22.05.2013 and the consent agreement dated 24.03.2017 on the ground that those documents were not in the possession of the plaintiff and as such, there could be no direction issued to the plaintiff to produce the documents which are not in his possession. 2.7. Challenging the same, the petitioner is before this Court.

3. Submission of Sri.S. S. Beturmah, learned counsel for the petitioner is that, once the plaintiff had admitted the signatures on both the above documents, the Trial Court ought to have permitted marking of the documents. The same not having been marked, when an application was filed under Order XI Rule 14 of CPC, a direction ought to have been issued to the plaintiff to produce the original of documents.

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4. Sri. D. L. Ladkhan, learned counsel for the respondent submits that, only the consent document dated 24.03.2017 had been confronted and signature is admitted by PW1. The other document, namely Masalu Agreement dated 22.05.2013 was not confronted and there is no admission on the part of PW1. He further submits that the Trial Court has rightly rejected the application under Order XI Rule 14 of CPC, since no direction could be issued to a person to produce a particular document which has been denied to be in custody by the said person. As such, he submits that there is no infirmity in the impugned order.

5. Heard Sri. S. S. Beturmah, learned counsel for the petitioner and Sri. D. L. Ladkhan, learned counsel for the respondent. Perused the papers.

6. The short question that would arise for consideration in the present matter is, "Whether a party who has categorically contended that he is not in possession NC: 2025:KHC-D:1450 of the original document can be directed vide order under Rule 14 of the Order XI of the Code of Civil Procedure, to produce such a document?"

7. Order XI Rule 14 of the CPC reads as under:

Order XI.

14. Production of documents.-- It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

8. A perusal of the above would indicate that, it would be lawful for the Court at any time during the pendency of the suit to order the production by any party thereto, of such of the documents in his possession or power, relating to any matter in question in such suit.

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9. Thus, the prerequisite for exercise of power under Rule 14 of Order XI CPC is firstly that the said document/s have to be in possession or power of a party to the suit, and secondly, that the documents should be relating to any matter in question in the suit.

10. Though in the present case, the second requirement is satisfied of the documents being relating to the question in the suit, the first prerequisite is not satisfied, inasmuch as, though the petitioner had alleged that the documents are in possession of the respondent, the respondent has denied possession thereof.

11. While dealing with an application under Rule 14 of Order XI of CPC, it cannot be ascertained as to whether the contention of a party that he is not in possession of document is true or not. Once a party where to contend that he is not in possession of a document, the prerequisite under Order XI Rule 14 of NC: 2025:KHC-D:1450 CPC not being satisfied, no directions could be issued to such party to produce a document which is actually denied to be in possession. The Court could of course draw adverse inference on such non- production as also permit the party filing an application Order XI Rule 14 of CPC to lead secondary evidence as regards to said document. In view of the foundational facts relating to the same having been established in terms of Section 65 of the Indian Evidence Act, 1872 and now Section 60 of the Bharatiya Sakshya Adhiniyam, 2023.

12. No ground being made out, reserving liberty as aforesaid, the petition stands disposed of.

13. In view of disposal of main petition, pending I.As., if any, stands disposed of.

Sd/-

(SURAJ GOVINDARAJ) JUDGE gab CT-MCK