

COMMON ORDERS ON I.A No. 16 TO 18

The applicant/defendant has filed I.A. No.16 under Order XVIII Rule 17 r/w Section 151 of CPC and I.A. No.17 under Section 151 of CPC seeking permission to re-open and recall the case from the state of arguments to further chief of D.W. 1. The applicant/defendant has also filed I.A. No.18 under Order 8 Rule 1A r/w Section 151 of CPC seeking permission to produce the documents mentioned in the accompanying application.

2. In support to the applications the defendant sworn to the affidavits contending that, the plaintiff has filed the above suit seeking the relief of vacant possession and other reliefs against him in respect of site bearing No.114 of Mallathahalli vialge, Yeshwanthapura Hobli, Bengaluru South Taluk by making false and baseless averments. The defendant is the sole and absolute owner of the property bearing No.114, katha No.2010 measuring east to west 40 feet and north to south 30 feet having purchased the same from its lawful owner for valuable sale consideration through the registered Sale Deed dated 09/10/1997 and ever since then the defendant is in peaceful possession, occupation and enjoyment of the same by constructing residential house and all the revenue records stands in his name and he is paying taxes regularly. The false allegations made by the plaintiff are denied by him in his written statement by presenting the true facts of the case. In support of his case the defendant has most credible documents with him viz., judgment and decree dated 12/11/2013 passed in O.S. No.182/2007 which is the suit filed by one Smt. K.M. Shakuntala who claims to be owner of the site bearing No.115 and 116 which are situated adjacent to the present suit schedule property purchased from its previous owner under two registered Sale Deeds dated 04/08/2004. One Sri. T. Venkate Gowda filed a suit in O.S. No.3338/2003 before City Civil Court, Bengaluru against one Sri. S. Nagesh for the relief of declaration of his title over the suit schedule property i.e. site bearing No.25,

katha No.1290 for the relief of permanent injunction. The proposed documents to be produced before the court very much clarifies that those who are claiming right over their vendor Sri. K.C. Krishnaiah have no title to the property. In the present suit also the plaintiff is claiming his right through K.C. Krishnaiah and therefore he also does not have any right, title or interest over the suit schedule property. He had obtained the certified copies of the said judgments long ago but he could not hand over the same to his counsel at the earliest point of time as he was unaware of the fact that the same would be much helpful to his present case and said documents got mixed with some other documents and he lost track of the same. During the month of January 2023 the matter of posted for arguments and the plaintiff had advanced his arguments and the case was posted for defendant's arguments. During first week of February 2023, he came across the said documents when he was searching for some old document and immediately he contacted his counsel and handed over the same and later he got to know that the proposed documents are very much helpful to his case. As such the documents now sought to be produced are very much essential and same are very much necessary for effective adjudication of the above case and it is necessary to recall D.W. 1 permitting him to lead further chief-examination. He has got very good case on merits and balance of convenience lies in his favour. If these applications are allowed no prejudice will be caused to the other side. On the other hand he will be put to irreparable loss and injury. On these grounds prayed for allowing the applications.

3. On the contrary, the plaintiff tendered his common objections wherein it contended that, the applications filed by the defendant is at the stage of final arguments of defendant's side. After hearing the arguments of the plaintiff side the defendant took three adjournments by saying that he will settle the dispute between the legal heirs of the plaintiff and thereafter he has filed the present applications with a sold intention to avoid and to protract the proceedings without allowing it to reach the logical end. There is no proper explanation offered by the

defendant to allow these applications at this stage of the proceedings. The averments and reasons assigned in the affidavits are all denied as false. The proposed documents/judgments have no bearing on the present suit and the defendant has no reason to produce the judgments passed in the other suit. The defendant is trying to misguide the court by producing the judgments which is no way connected to the present suit as none of the parties in the said suit are the parties in the present suit, as such allowing the defendant to produce the proposed documents and to lead his further evidence will give scope for him to fill up the lacuna or vacuum existing in the evidence in the present suit. The defendant has failed to explain in what way those judgments are required to decide the present case as they are no way related to the present suit schedule property. The averments made in para 7 and 8 of the affidavits are hereby denied as false. No reasons are stated to condone the inordinate delay in production of the proposed documents. It is not the case of the defendant that he is not in possession of those documents at the earlier point of time. The defendant with malafide intention and ulterior motive to drag the proceedings for further more period for the reasons best known to him has filed these applications. As such the applications are most misconceived and filed to waste precious time of this court. On these grounds prayed for dismissal of the applications with exemplary costs.

4. Heard and perused material on record.

5. The point that arises for my consideration is:-

“Whether the applications filed by the applicant/defendant deserve to be allowed?”

6. My answer to the above point is in the affirmative for the following:-

REASONS

7. As per the averments of the affidavits annexed to I.A. No.16 to 18, it is particular case of the applicant/defendant that, the proposed documents to be produced before the court very much clarifies that those who are claiming right over their vendor Sri. K.C. Krishnaiah have no title to the property. In the present suit also the plaintiff is claiming his right through K.C. Krishnaiah and therefore he also does not have any right, title or interest over the suit schedule property. He had obtained the certified copies of the said judgments long ago but he could not hand over the same to his counsel at the earliest point of time as he was unaware of the fact that the same would be much helpful to his present case and said documents got mixed with some other documents and he lost track of the same. During the month of January 2023 the matter of posted for arguments and the plaintiff had advanced his arguments and the case was posted for defendant's arguments. During first week of February 2023, he came across the said documents when he was searching for some old document and immediately he contacted his counsel and handed over the same and later he got to know that the proposed documents are very much helpful to his case. As such the documents now sought to be produced are very much essential and same are very much necessary for effective adjudication of the above case and it is necessary to recall D.W. 1 permitting him to lead further chief-examination.

8. On the contrary, it is particular common objection of the plaintiff that I.A. No.16 to 18 are misconceived and they are filed only with an intention to drag on the proceedings. The averments and reasons assigned in the affidavits are all denied as false. The proposed documents/judgments have no bearing on the present suit and the defendant has no reason to produced the judgments passed in the other suit. The defendant is trying to misguide the court by producing the judgments which is no way connected to the present suit as none of the parties in the said suit are the parties in the present suit, as

such allowing the defendant to produced the proposed documents and to lead his further evidence will give scope for him to fill up the lacuna or vacuum existing in the evidence in the present suit. The defendant has failed to explain in what way those judgments are required to decide the present case as they are no way related to the present suit schedule property.

9. After summarizing the facts and circumstances of application and objections, it necessary to make notify the ingredients of law as contemplated under Indian Evidence Act. As per the Indian Evidence Act, there are five stages with respect to documents viz., production, objections, admission, appreciation and probative value of the documents proposed to produce. It is of the objection as contended by the plaintiff with respect to admissibility of the documents on record. When other stage kept open for discussion the reason assigned by the plaintiff in his objection not holds any water. That for the reason herein above referred found on I.A. No.18 in so far the production of documents it consequently the same herein warrants to allow I.A. No.16 and 17. Further no substantial reasons that the plaintiff brought forth on record to reject the applications and admitted the documents proposed to be produced by the applicant/defendant.

10. Further, if these applications allowed, the plaintiff have also the right for cross-examination upon such documents. Upon such cross-examination it can made out the case of the plaintiff that such proposed documents not relevant and not a material to decide the suit in effectually. When the facts are stood like that, the objections tendered by the plaintiff not to permit the applicant to produce such documents does not holds any water. Accordingly, that I have not find any merits in the objections tendered by the plaintiff. Consequently, the applications filed by defendant deserve to be allowed. Hence, I answer the point raised for consideration in the affirmative and proceed to pass the following:-

ORDER

I.A. No.16 to 18 filed by the defendant are hereby allowed. Consequently the case from arguments stage hereby recalled.

D.W. 1 is permitted to lead his further evidence on the proposed documents.

For further chief-examination of D.W.1 by 16/06/2023.

(Onkarappa.R)
V ACC &SJ, Bengaluru.