

COMMON ORDERS ON IA-15 & 16

The counsel for plaintiff has filed IA-15 under Section 151 of CPC seeking the order passed on 11-02-2020 the further plaintiff evidence is taken a nil may be set aside and permitted to plaintiff to lead his evidence as per list and I.A.No.16 Under order XVI Rule 1(A) R/w.Sec.151 of CPC seeking permission to produce the list of witness and also filed separate list of witness.

2. These interim applications are accompanied with the sworn affidavits of plaintiff. Wherein it is contended that he has filed suit against defendant No.1 to 3 for the relief of declaration and permanent injunction. Further defendant No.1 is his own brother and defendant No.2 and 3 are co brothers. This suit is pertaining to R.S.No.95/2 measuring 4 Acres, situated in Neginahal village of Bailhongal Taluk. Due to ill health he has unable to attend last date of hearing and not produced list of witness. Further on account of not producing list of witness this court to passed an order on 11.02.2020 that the further plaintiff evidence is taken as nil. To prove his case it is necessary to examine the witness. So, the list of witness produce by him is allowed no harm or injustice cause to the defendants. Otherwise he put into hurdle and irreparable loss. Hence, he prays to

allow the application and permitted him to lead evidence on behalf of him.

3. On the other hand the counsels for the defendant No.1, 3 and 4 have filed their common objections by denying entire contentions taken by the plaintiff in the sworn affidavits. The applications filed by the plaintiff are not maintainable either in law or on facts, on the grounds then after closer of evidence of plaintiff, case is posted for the defendant evidence. No reasonable grounds are made out by the plaintiff to re-open the case. Further contended that, the entertaining the said applications at this stage is nothing but filing up of lacunas on the part of the plaintiff, which is not permissible under the law. The applications filed by the plaintiff are not maintainable in the eye of law. The plaintiff with a malafied intention has filed these applications to curtail, obstruct and prolong the smooth trail of the suit. Further contended that now the case is posted for further evidence of defendant No.4. Again the present applications are filed to reopen the evidence of plaintiff at this belated stage to fill up the lacuna of it case. Therefore, such applications cannot be allowed and applications are liable to be rejected. Hence, prays to reject the applications.

4. Heard and perused the material placed on record.

5. On perusal of the material placed on record and the argument submitted by the both counsels the following point that arise for my consideration:

1. Whether the plaintiff has made grounds to allow the IA No.15 filed under under section 151 of CPC and I.A.No.16 U/Order XVI Rule 1(A) R/w. Sec. 151 of CPC permitted to lead further evidence?

6. My answer to the above point is in the “**AFFIRMATIVE**” for the following:

:REASONS:

7. The plaintiff has filed the present suit for the relief of declaration and permanent injunction. Now the case is posted further evidence of defendant No.4. In the meantime the plaintiff has come up with these applications seeking re-open the side of plaintiff and permit it to lead further evidence as per the list of witness.

8. In the affidavits accompanied with the interim applications, the plaintiff has contended that he has filed list of witness. Hence, in view of the same as per the list witness, the plaintiff wants to lead the further evidence on behalf of him. Hence, recall of the stage to re-open the plaintiff side evidence is very much essential. Hence, in order to prove the contention, further evidence of plaintiff as shown in the list of witness is very much need. Hence, prayed to permit him to lead further

evidence by way of re-opening the stage to plaintiff evidence.

9. On the other hand defendants have contended that, applications filed by the plaintiff are not maintainable as inspite of availing ample opportunity and he has failed to examine the other witness. When the case was posted for further evidence of defendant No.4, the plaintiff intending to fulfill the lacuna by way of leading further evidence, which is not permitted in the eye of law. There are no grounds made by the plaintiff to allow the applications. The reasons quoted in the applications are not believable. Hence, prays to reject the applications.

10. On perusal of the record it reveals that in this case sufficient opportunity has been given to the plaintiff, but inspite of availing opportunity he has not lead the further evidence at the earlier point of time. When the case is posted for the further evidence of defendant No.4, in the meantime the plaintiff rushed to the court and filed list of witness and by way of filing present applications, he has sought for re-open evidence on the side of plaintiff and permit him lead further evidence as per list of witness furnished by him. On further perusal of the records, it reveals that the valuable right of the parties is involved in the present suit, every opportunity has to be given to the parties to put forth their defence prior to delivering the judgement.

It is the fact that the plaintiff has approached this court at the belated stage, hence for the same is to be penalised by imposing suitable costs. If the opportunity is given to plaintiff to lead further evidence as per list, the defendants have got every opportunity to cross-examine the witness. If applications are allowed, no harm or prejudice will be caused to the defendants. Hence, in order to decide the real controversy between the parties and avoid multiplicity of litigation, this court is of the considered opinion that, the plaintiff has to be given one more opportunity to lead further evidence as per list. With these observations, I answer point under consideration in the AFFIRMATIVE and proceed to pass following:

:ORDER:

I.A.No-15 filed under section 151 of CPC and I.A.No.16 filed under order XVI Rule 1(A) R/w. Sec. 151 of CPC are hereby allowed on cost of Rs. 300/- together and thereby re-open the side of plaintiff evidence and permitted to the plaintiff lead further evidence and list of witness filed by the plaintiff taken on record.

Sd/-

Addl. Civil Judge, Bailhongal.