

KABG410002342011



IN THE COURT OF THE I ADDL. CIVIL JUDGE & JMFC,
CHIKODI, AT: CHIKODI.

:: Present ::

Shri. Nagesh Patil,
B.Com.,LL.B.
I Addl. Civil Judge & JMFC,
Chikodi.

Dated this the 11th day of December 2023

F.D.P.No.6/2011

PETITIONERS: 1. Smt. Kamala Shivaputra Ligade,
R/o: Mahalingapur, Tq: Mudhol
& others

(By Sri. L. V. B, Advocate)

Vs

RESPONDENTS: 1. Sri. Ishwar Mahalingappa Ligade,
R/o: Mahalingapur,

(By Sri. R. B. T, Advocate)

Parties To I.A.No.XVIII & XIX

Applicants/Ori. Respondents No.18:

1) Sri. Prashant Mahalingappa Koligud,
& others

Vs

Opponent/Ori. Petitioners:

- 1) Sri. Smt.Kamala Shivaputra Ligade,
& others

**ORDERS ON I.A.NOS.XVIII & XIX FILED UNDER SEC.151
OF CPC & UNDER ORDER 18 RULE 17 R/W SEC.151 OF
CPC**

The counsel for respondent No.18 filed I.A.No.18 U/Sec.151 of CPC to recall the case to lead further respondent evidence and I.A.No.19 to set aside the order dated 14.09.2023 and permit the respondent No.18 to lead further evidence.

2. In support of the application the GPA holder of the respondent No.18 has sworn to an affidavit wherein stated that, the petitioners have filed this petition in pursuance of the preliminary decree. In the preliminary decree he was not made as party, directly in the present petition he has been added as party. Earlier the evidence of respondents No.16 and 17 was adduced and thereafter the court pleased to frame the issues. In pursuance of the framing of the issues a burden is casted upon him specifically in order to prove the objections raised by him. In view of framing of issues an independent evidence is required. But on the last date of hearing this court passed an order that respondents evidence

is closed and posted the case for arguments, hence it is necessary to set aside the order dated 14.09.2023 and permit the respondent No.18 to lead evidence, if same is allowed no loss will be caused to the other side. On the contrary much hardship will be caused to him. Accordingly, prays to allow the application.

3. Per contra, the counsel for petitioners has filed objections to the I.A.No.18 and 19 wherein contended that the applications are not maintainable and the applications are filed only with an intention to delay the proceedings, no proper reasons are stated in the applications to allow the same. The respondent No.18 has filed earlier suit in O.S.N.279/2015 and O.S.No.48/2012 before the Hon'ble Civil Judge Court, Mudhol and said suits are dismissed but they have not filed any appeal against the said orders. The present applications are filed with an intention to delay the proceedings, accordingly prays to dismiss the application.

4. Heard the arguments.

5. On hearing the points for Consideration of this court is as under:

POINTS

1. Whether the applications i.e., I.A.No.18 filed U/Sec.151 of CPC and I.A.No.19 filed

U/O.18 Rule 17 R/W Sec.151 of CPC
deserves to be allowed ?

2. What Order?

6. My answer to the above points are as under.

Point No: 1: Affirmative.

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

:: REASONS ::

7. **POINT NO.1:-** On perusal of the materials on record, the present petition is filed seeking to draw decree in terms of preliminary decree passed in O.S.No.84/1967. The evidence of petitioner is completed and evidence of respondents No.16 and 17 is also completed. When the case is posted for arguments at this stage the respondent No.18 has filed these applications with a prayer to reopen case and permit him to lead further evidence on the basis of issues framed by this court and to prove the issues the independent evidence of respondent No.18 is necessary, accordingly prays to allow the application.

8. On perusal of the materials on record the respondent No.18 has filed objections to the main petition and the

petitioner and the respondent No.16 and 17 have adduced evidence. Therefore in order to prove the contention of the respondent No.18 it is just and necessary to give an opportunity for him to prove his objections, hence it is necessary to give an opportunity to him to adduce evidence, if same is rejected then injustice would be caused to the respondent No.18. For determining the real controversy between the parties it is just and necessary to adduce the evidence of respondent No.18 to avoid multiplicity of proceedings and also to shorten the litigation if same is allowed no loss will be caused to the petitioners. The contention of the petitioners that the applications are filed to delay the proceedings the same can be taken care of by imposing cost. Further the petitioners have always got an opportunity to cross examine the respondent No.18. In the light of the above discussion and reasons the respondent No.18 has made out grounds to allow him to lead further evidence. **Accordingly, point No.1 answered in the Affirmative.**

9. **POINT NO.2:** In view of the above discussion I proceed to pass the following;

ORDER

I.A.No.18 filed U/Sec. 151 of CPC
and I.A.No.19 filed U/O.18 Rule 17
R/W Sec. 151 of CPC by the
respondent No.18 are hereby allowed
on cost of Rs.1,000/-.

The case is reopened for
respondent No.18 evidence.

The respondent No.18 is
permitted to adduce evidence.

(Dictated to the Stenographer, typed by her script revised and
corrected and then pronounced by me in the Open Court on this 11th
day of December 2023).

Sd/-
(Nagesh Patil)
I Addl. Civil Judge & JMFC,
Chikodi