

KABG500010452022



ORDER ON I.A.No.IX FILED U/O VIII RULE 1A R/W
SECTION 151 OF CPC AND U/O XVI RULE 1(A) R/W
SECTION 151 OF CPC

The defendant No.3 has filed this present application U/o VIII Rule 1(A) R/W Sec.151 CPC at I.As.IX praying to permit them to produce the documents annexed to this application and filed another application Under Order XVI Rule 1(A) R/W section 151 of CPC at IA.No.X praying to permit them to produce the list of witnesses.

2. In the accompanying affidavits of these applications, the defendant No.3 contended that the documents which he intending to produced under this application are not produced by them inadvertently. The said documents are very much

necessary in order to prove their case as such, he prayed to permit them to produce the documents.

3. In the accompanying affidavit of IA.No.X the defendant No.3 contended that he is intending to examining the witnesses in support of his case as such, he has filed the list of witnesses on their behalf. Hence, he is to be permitted to file the list of witnesses. If the applications are allowed, no loss will be caused to other side. If not he will be put to irreparable loss and injury.

4. The plaintiff filed objections to IA.No.IX by denying entire contentions of the defendant No.3. Further plaintiff contended that the documents which the defendant No.3 are intending to produced are not at all necessary to prove the case of the defendants. Further contended that the documents produced at Sl.No.5 to 11 in the list are created for the purpose of this suit in order to escape for their liability and the documents produced at Sl.No.10 to 13 are pertaining to the

counter blast suit filed by the defendants against him. Hence, the defendants cannot be produced the said documents.

5. Further in the objections to IA.No.X the plaintiff denied the contentions of the defendant No.3 and further contended that the affidavit in support of this application does not disclose the on what fact the witnesses are giving their evidence. Unless the particulars are given the defendants cannot be permitted to file the list of witnesses and the defendant has not assigned any reasons for not filing the list of witnesses after framing of the issues. Hence, plaintiff prayed to reject the applications.

6. Heard both side. Perused the application and records.

7. The points that arise for my consideration are;

1. Whether the defendant No.3 has made out grounds to permit them to produce the documents and file the list of witnesses?

2. What order?

8. My findings on the above points are:

POINT No.1: In the Affirmative

POINT No.2: As per final order

for the following;

REASONS

9. **POINT No.1:** This present suit is filed by the plaintiff seeking the relief of specific performance of contract directing the defendants to execute the registered sale deed based on the agreement of sale dated 04.06.2020 by receiving balance sale consideration of Rs.1,00,000/-. Further it is clear that when the matter is posted for defendants side evidence at that time the defendants are filed these applications.

10. The defendants are contending that at the earlier point of time by inadvertence they could not able to produce the documents which they are intending to produce along this application and further contended that the witnesses which

they are intending to examine before the court are material witnesses in support of their case. The plaintiff contended that the documents produced at Sl.No.5 to 10 are created documents and the documents produced Sl.No.10 to 13 are relating to the counter blast suit filed by the defendants in order to defeat their right over the suit property as such, they cannot be permitted to produce the documents. Further contended that there is no mention in the application that on which point the defendants are intending to led the evidence of the witnesses without any proper explanation the defendants cannot be permitted to file the list of witnesses.

11. No doubt, it is clear that immediately after framing the issues, the defendants are not produced the list of documents and list of witnesses. When the case is posted for defendants side evidence at that time the defendants are filed these applications. Under IA.No.IX the defendants are seeking permission of the court to permit them to produce the documents. By perusing the list of documents produced by the

defendants it is clear that the defendants are intending to produced the legal notices, postal receipts, postal acknowledgment card, photographs, CD, certificate issued by the Village Accountant, challan copy, cancellation agreement of sale and certified copies of order sheet and plaint in OS.No.190/2023 and 197/2023. By perusing the documents which the defendants are intending to produce under these applications are pertaining to the suit property and they are pertaining to the subject matter of the suit. Further, the witnesses shown in at IA.No.X are the material witnesses in support of the case of the defendants. By perusing the list of witnesses and the documents i.e., the alleged cancellation of agreement it shows that the witnesses which the defendants are intending to led the evidence are the witnesses of the alleged cancellation deed and the evidence of these witnesses is necessary to prove their defense. If the defendants are not permitted to produce the documents and to file the list of witnesses then definitely it will cause irreparable loss and

injury to the defendants. On the other hand, it will not cause any loss or injury to plaintiff. Further the plaintiff is having every opportunity to cross-examine the defendants on the documents produced by them and to cross-examine the witnesses who gave evidence in support of the case of the defendants. Hence, I am of the considered view that the defendants are to be permitted to produce the documents and list of witnesses as annexed to these applications. Hence, I answered the **Point No.1 in the Affirmative.**

12. **POINT No.2:** For the aforesaid findings, I proceed to pass the following:

ORDER

The application filed by the defendant No.3 U/o VIII Rule 1(A), R/W Sec.151 of CPC at I.A.No.IX and U/o XVI Rule 1(A), R/W Sec.151 of CPC at I.A.No.X are hereby allowed.

Defendants No.3 is permitted to produced the documents and permitted to file the list of witnesses.

Call on for defendants evidence by
29/10/2024.

Sd/-

Prl. Sr.C.J.Gokak.