

KABG600004892014



**IN THE COURT OF SENIOR CIVIL JUDGE, HUKKERI,
ITINERARY COURT AT SANKESHWAR.**

*Before: Sri, K.S.Rotter, B.Com. LL.B (Spl),
Senior Civil Judge, Hukkeri.*

Dated this 25th day of January 2024

O S No.88/2014

Plaintiffs: Shri Vishnu Yallappa Kelogi and another
V/s

Defendants: Shri Vasant Dattatrey Gavade and others.

PARTIES TO IA No.23 to 25

Applicant/ Defendant No.1B:

- Shri Dayanand Vasant Gavade,**
Age: 34 years, Occ: Private Service,
R/o: Modaga, Taluk: Hukkeri,
District: Belagavi and others.
(By Shri R.V. Joshi, Advocate)

-Versus-

Opponent/Plaintiff No.1:

- Shri Vishnu Yallappa Keloji,**
Age: 38 years, Occ: Agriculture,
R/o: Modage, Taluk: Hukkeri,
District: Belagavi.
(By Shri R. B. Patil, Advocate)

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Nature of the IAs : Production of documents and recall of witness

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- i). *Provisioned under which the application is filed* : *U/Order 8 Rule 1A R/w section 151 of CPC, U/Sec.151 of CPC and U/Order 18 Rule 17 R/w section 151 of CPC*
- ii). *Relief sought for* : *Production of documents and recall of Dw-1.*
- iii). *The date on which the Application is filed* : *01.12.2023*
- iv). *Number of the application* : *IA No.23 to 25*
- v). *The date on which the objections are filed by the different opponent* : *15.12.2023*
- vi). *The date on which orders were Passed on the said application* : *25.01.2024*

-Sd/-

(K.S.Rotter)

Senior Civil Judge, Hukkeri.
Itinerary Court at Sankeshwar.

Stage of the suit: For defendant's evidence.

COMMON ORDERS ON IAs No.XXIII to XXV.

The defendant No.1B has filed IA No.XXIII under Order VIII Rule 1(A) of Civil Procedure Code, for production of documents shown in the list filed along with the application.

2. Further, the defendant No.1B has filed another IA No.XXIV under Section 151 of Civil Procedure Code, for reopening the case for the purpose of further chief –examination of Dw-2.
3. Further, the defendant No.1B has filed another IA No.XXV under Order XVIII Rule 17 R/w Section 151 of Civil Procedure Code, for recall of DW.2 for the purpose of further chief -examination.
3. The above applications are supported by affidavits sworn by the defendant No.1B explaining the reasons for the same.
4. The said applications have been resisted by the plaintiffs by filing written objections.
5. I have heard the arguments on the both the sides.
6. The points that arise for my consideration are as under:
 - 1) *Whether the defendant No.1B has made out sufficient grounds for reopening the case for the purpose of further chief-examination of DW.1 by producing the documents as per IAs No.23 to 25?*

2) *What order?*

7. My findings on the above points are as under:-

1. In the affirmative
2. As per final order for the following:-

REASONS

8. **Point No.1:** Admittedly, the plaintiff has filed this suit for the relief of partition and separate possession against the defendants in respect of the suit properties. It is seen from the records that, after registering the suit, the defendants appeared and filed their written statement by denying the contentions of the plaintiffs. Thereafter, this court has framed the issues and the plaintiff No.1 has examined himself as PW1 and in support of their contentions also examined 3 witnesses as PW2 to 4 and produced 20 documents Ex.P1 to 20 and closed their side. The defendants in support of their defence have examined 2 witnesses as DW1 & 2 and now the case is fixed for further evidence of defendant. At this stage, the defendant No.1B has filed these applications for production of documents, reopening the case and re-call of Dw.1 for the purpose of further chief examination. The defendant No.1 has come up with these applications stating that, during the pendency of this case on 27.09.2023, the plaintiff colluding with the surveyor has created 11E sketch to the extent of 00-11Gunta in suit land RS No.18/ and sold out

same to one Smt, Tulasa Yashwant Khavanekar and recently he come to know about the said facts and immediately, he has obtained the said documents such as RTC and copy of sale deed and produced. He stated that, the proposed documents are very important and material evidence to prove his case. It is stated that, the said documents are required to produce in this case and if the application is allowed, no prejudice will be caused to the plaintiffs. On the other hand, the plaintiffs in their objections stated that, the applications filed by the defendant No.1B are false and not maintainable. The plaintiffs stated that, at this belated stage, the defendant No.1B has filed false applications to drag the matter. Hence, the plaintiffs prayed to dismiss the applications.

9. I have perused the applications, documents and objection of the plaintiffs. The defendant No.1B is relying upon the documents which are produced along with the IA stating that, the said documents are very necessary for proving his case. Further, the advocate for the defendant No.1B argued that the documents, which are produced, are very relevant and material documents to prove his case. On the other hand, it is the objection of the plaintiffs that, the defendant No.1B has not shown any reasons and also not explained the necessity of producing the oral evidence and documents produced at belated stage. However, it is not appropriate at this stage to decide the validity of the said documents

produced by the defendant No.1B. At this stage, a limited question of production of documents has to be considered. The plaintiff not denied the sale deed of suit land RS No.18/ in favor Smt, Tulasa Yashwant Khavanekar. Therefore, whether the documents produced by the defendant No.1B is material for the disposal of this suit or not? is a substantial question to be decided after full pledge enquiry and after recording the evidence of both parties. It is settled proposition of law that parties should be given sufficient opportunity to put forth their case. It is true that the defendant No.1B should have been diligent in producing his important document at the earliest stage in this case. But on that ground, the applications cannot be rejected, since it would be as good as shutting a very important piece of evidence. Hence, the delay in getting production of documents can be suitable compensated by imposing proper and reasonable cost. If this IAs are not allowed the injustice would be cause to the defendant No.1B. Any have the plaintiffs will have the opportunity to cross-examine the Dw-2 on alleged documents. Hence, the question of causing prejudice to the plaintiffs does not arise at all. Hence, without much discussion, this court comes to the conclusion that, IAs filed by the defendant No.1B deserves to be allowed. Accordingly, I answer point No.1 in the affirmative.

10. **Point No.2:** For the above reasons, I proceed to pass the following:-

ORDER

The IA No.XXIII filed by the defendant No.1B under Order VIII Rule 1(A) of Civil Procedure Code, is allowed on payment of cost of Rs.200/- to the plaintiffs. Accordingly, the documents which are produced by the defendant No.1B are received on record subject to the proof and relevancy.

Further, IA No.XXIV filed by the defendant No.1B under Section 151 of Civil Procedure Code is allowed on payment of cost of Rs.200/- to the plaintiffs and case is reopened for further chief examination of Dw-2.

Further, IA No.XXV filed by the defendant No.1B under Order XVIII Rule 17 R/w Section 151 of Civil Procedure Code is also allowed on payment of cost of Rs.200/- to the plaintiffs and Dw-2 is recalled for further chief examination.

(Dictated to the steno Typed by her, corrected by me and then pronounced in open court on this 25th day of January 2024).

-Sd/-

(K. S. Rotter)

Senior Civil Judge, Hukkeri.
Itinerary Court at Sankeshwar.